

***United States Court of Appeals
for the Second Circuit***



APPENDIX

NO. 77-4121

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

MILGO INDUSTRIAL, INC.,

Respondent.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

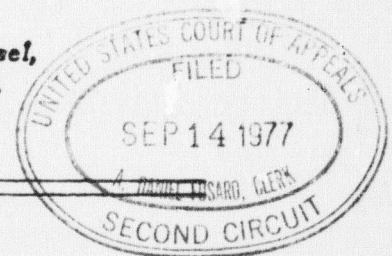
APPENDIX

VOLUME II

Pages 389 - 433 and
450 - 630

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1 you just said.

2 Q Now, the proposal which you gave the company on
3 8/8, did that contain a wage demand?

4 A I believe it did.

5 Q And Mr. Tolmach, I believe, told you after you gave
6 him the demands that he needed time to study them; is
7 that correct?

8 A That is correct.

9 Q Did you tell Mr. Tolmach that that was okay, if
10 he needed the time it was okay with you?

11 A I could understand it, yes. It is a large contract.

12 Q I believe you testified that you told Mr. Tolmach
13 that you wanted to meet fast because the men had been
14 waiting a long time?

15 A Well, we wanted to expedite the thing, yes.

16 Q I show you your affidavit, Page 1 starting with
17 Paragraph 4 and I ask you whether or not your affidavit
18 contains any language to the effect that you notified
19 Mr. Tolmach that you wanted to meet fast because the
20 employees had been waiting a long time or anything to that
21 effect?

22 A Not on the first page, no.

23 Q Look at the second page. Read the whole August 8th
24 meeting if you have to.

25 A May not be reflected here, no.

1 Q Did the labor board ask you about the meeting
2 when they took this affidavit?

3 A Yes.

4 Q Did they ask you how the meeting ended?

5 A They may have. I don't remember now.

6 Q Is there anything in this affidavit since you
7 have just read it on Page 1 or 2 or 3 or 4 dealing with
8 the August 8th date which would indicate that Mr.
9 Tolmach said he was a busy guy and would make it as soon
10 as possible?

11 A At the first meeting?

12 Q Yes, did Mr. Tolmach say that at the first meeting?

13 A It may not have been.

14 Q It may not have been?

15 A Just the two questions of he wanted to study it
16 and he was going on vacation. May not have been recorded
17 on the --

18 Q Now, you also testified that after the first meeting
19 you did not hear from Mr. Tolmach and sent a letter to
20 Mr. Tolmach in order to arrange for a second meeting;
21 was that your testimony?

22 A After the first meeting?

23 Q After the August 8th meeting.

24 A Gee, I don't remember.

25 Q Did you send a letter to Mr. Tolmach after the

1 August 8th meeting asking him to meet again?

2 A I really don't remember. If I said it it is in
3 the record. I don't remember if I --

4 Q Do you have a copy of any such letter in your
5 possession?

6 A If I said it it is in the records and if I did say
7 I sent it I would have a record.

8 Otherwise it is a mistake.

9 Q Do you keep copies of all letters you send?

10 A We keep all copies, of course.

11 Q Did you turn those letters over to the labor board?

12 A If they would be in the labor board, if I sent a
13 letter --

14 MR. KAUFMAN: Pursuant to the subpoena, Mr. General
15 Counsel, is there such a letter in this room for the
16 dates between August 8th and the next meeting on September
17 9th sent by the union?

18 THE WITNESS: I wouldn't think there would be a
19 letter, frankly, in that short a period of time,
20 especially at the start of negotiations.

21 MR. EISENBERG: I don't have such a letter in my
22 possession.

23 THE WITNESS: I don't think -- if I said that it
24 is a mistake, I don't see sending a letter in such a
25 short period of time after the first meeting.

1 We received a letter from the company after the
2 first meeting.

3 MR. KAUFMAN: Please, I have no question pending.

4 Q Now, I believe you also testified that Mr. Zito
5 contacted Mr. Tolmach and set up this meeting; is
6 that correct?

7 A August 8th.

8 Q After August 8th that Mr. Zito contacted Mr. Tolmach?

9 A I don't remember. If I said it I really don't
10 remember now.

11 Q Let me ask you, who contacted Mr. Tolmach after the
12 August 8th meeting? Was it Mr. Zito or was it yourself?

13 A I don't remember at this point.

14 Q Let me show you your notes of the meeting of August
15 8th and maybe that will refresh your recollection.

16 A No. I made a lot of calls to Dave Tolmach but
17 if I never got them directly meetings were arranged after
18 on his calling back with his office.

19 I called a number of times.

20 Q What does that say "I called for" --

21 A A week and a half before Dave Tolmach called back.
22 He called back to the office, didn't call me out in
23 the field.

24 Q I see, so that this doesn't even reflect a
25 conversation that you may have had with Mr. Tolmach?

1 A No, in his office. If I caught him in I would
2 talk to him. If he wasn't there I would talk to his
3 office.

4 Q So that your notes don't necessarily reflect when
5 it talked about your calling Mr. Tolmach that you had
6 any conversation with Mr. Tolmach?

7 A That's right.

8 Q It could have been what your office reported to you?

9 A No, when I say I called I called the office. It
10 doesn't reflect whether I spoke to Dave or not.

11 Q It says David Tolmach called back.

12 A He called back the office. He couldn't call me back
13 because I'm out in the field.

14 Q Does it say here he called back the office?

15 A No, it says he called back.

16 Q Does it say he spoke with anyone in the office?

17 A No, it doesn't say that.

18 Q So it is your testimony he may have called back
19 the office and in fact you didn't even speak to him;
20 is that correct?

21 A That could very well be, so the only time he would
22 speak to me is when I called directly and I caught him in.

23 Directing your attention to the September 9th
24 meeting, I believe you testified that on August 4th
25 when you asked for the job tasks, the job classifications

1 the company told you they didn't have classifications
2 and that you asked them what the employees did; is
3 that right?

4 A That's right.

5 Q And you testified that the company gave you an
6 explanation of what the employees did; is that right?

7 A They expounded on what this man did, what that
8 man did and so forth.

9 Q That was on August 8th; is that correct?

10 A That is correct.

11 Q Now, on September 9th I believe it was your testimony
12 or let me ask you, did you ask again on September 9th
13 for the job tasks of the employees?

14 A I testified I asked them.

15 Q Did you ask for them?

16 A If I testified --

17 Q I don't know what you testified to.

18 I am asking you.

19 A I said a lot of things that --

20 Q You recall that during direct and I assume that
21 if you testified as to facts during direct you could
22 testify to facts during cross-examination.

23 Did you or did you not ask for job tasks during the
24 September 9th meeting?

25 A I don't recall if I said that here or not. I don't

1 recall. If I said it it is here.

2 Q I am asking you. I don't care what you said here.
3 I am asking you now to the best of your knowledge do
4 you recall asking for job tasks at the September 9th
5 meeting, yes or no?

6 A I don't know.

7 Q You don't know?

8 A No.

9 Q Isn't it a fact that the company went over the job
10 tasks again with you on September 9th and that you made
11 notes as to the individual work performed by each
12 individual employee?

13 A September 9th?

14 Q On September 9th.

15 A I don't believe September 9th, no.

16 Q I show you Page 2 of your notes. Is that date
17 September 9, 1975?

18 A It is.

19 Q I ask you to turn the page to the other side of
20 the paper.

21 A What makes you say that is September 9th? What
22 makes you say that is September 9th? Why do you draw
23 that conclusion?

24 Q Is this September 9th on this side, and this
25 is the second page of that.

1 A Yes, and this is the second page of that.

2 Q The second page of what?

3 A Of this, is this page here. It is not even here,
4 this is the second page of this so why are you drawing
5 conclusions? This isn't the 9th.

6 MR. KAUFMAN: Excuse me, so that the record is
7 clear --

8 MR. EISENBERG: Can I see what it is?

9 MR. KAUFMAN: Just a second. If you want to come
10 up you can.

11 So that the record is clear the witness has said
12 that Page 1 of September 9th, it is dated September 9th
13 and that Page 2 is marked Roman Numeral 2.

14 THE WITNESS: Right.

15 Q Now, on the back of Page 1 of September 9th are
16 the names --

17 A Right.

18 Q (Continuing) -- of employees along with their
19 job tasks.

20 A That is correct.

21 Q Was that also recorded on September 9th?

22 A Not necessarily, no.

23 Q What date was that recorded on?

24 A Might have been recorded on the first meeting,
25 that might have been recorded. It is a possibility.

1 Q The first meeting?

2 A Because there was only one discussion on the
3 question of job operation where the company gave us some
4 verbalization of it.

5 Q When you say verbalization did you make these notes?

6 A Yes.

7 Q It is your testimony that this wasn't done on
8 September 9th?

9 A No, I'm not saying it wasn't done but I don't see
10 how you draw the conclusion --

11 Q I am not drawing any conclusion, I am looking at
12 your notes and asking you questions.

13 You have the answers, I don't know the answers.

14 A My answer is that it was given to me once we went
15 over man by man and the company verbalized in terms of
16 what each man did.

17 Q Was it given to you on August 8th when you said
18 you requested it or was it given to you on September 9th
19 when you don't know if you requested it?

20 A It was given to me at one meeting.

21 I don't remember the meeting. It was given to me and
22 it was one of the early meetings. It could have been
23 the first meeting or the second meeting but I don't
24 remember which meeting it was.

25 Q Did you request it at both meetings or just one
meeting?

1 A May have requested it at both meetings and
2 after I received it I requested it again because it was
3 not sufficient for me.

4 Q Let me ask you this, you testified very clearly
5 during your direct examination about conversations that
6 were had, who said what to whom and what you said to
7 them and what was discussed and what you asked for and
8 what was given to you.

9 Now I am asking you did you request job tasks on
10 August 8th?

11 A I did.

12 Q And did the company give you information?

13 I believe you testified just two minutes ago that
14 they did.

15 A It is possible that they gave me this information
16 or we had a general discussion about classification,
17 that they didn't have a classification system.

18 Q And on September 9th did you request job tasks?

19 A I believe I did.

20 Q Did they give you information?

21 A Well, I don't know where this information came at,
22 which meeting it came but it came at one of the first
23 meetings and it could have been on September 9th in
24 expounding on each guy or it could have been at the
25 earlier meeting, I'm not so sure.

1 Q By looking at the documents which are your
2 notes of the meetings does it refresh your recollection
3 as to when that information was recorded by you?

4 A No, it doesn't.

5 Q Does not refresh your recollection?

6 A No. Could have been one of the other meetings,
7 could have been the first or second meeting.

8 Q Do you recall if job tasks were discussed twice
9 or were job tasks only discussed once?

10 A It was discussed more than once. A number of times.

11 Q The first two meetings, sir?

12 A Discussed twice.

13 Q Was it discussed at the August 8th meeting and the
14 September 9th meeting or was it only discussed at one
15 of the meetings?

16 A We discussed the specific individuals at one
17 meeting.

18 Q Only at one meeting?

19 A Specific individuals, yes.

20 Q You don't recall now whether it was at August 8th,
21 this meeting or the September 9th meeting; is that your
22 testimony?

23 A That is correct.

24 Q Now, could you tell me on September 9, 1975 which
25 items you requested from the company with respect to the

1 economic packages that they were already giving
2 to their employees and including job classifications?
3 Would you again state for us what you requested?

4 A The welfare booklet we didn't get.

5 Q Did you get the welfare costs?

6 A I believe we got welfare costs in the early part
7 of negotiations, yes.

8 Q So on September 9th you received the welfare costs;
9 is that correct?

10 A Could have been the 9th or 2nd or 3rd meeting I
11 think we got them.

12 Q Oh, I'm directing your attention to September 9th.
13 Did you receive the welfare costs on September 9th?

14 A I don't remember. It was in the early stage of
15 negotiation we received some welfare costs on the present
16 plan they had.

17 We might have gotten some pension costs too at
18 that stage of the game too.

19 Q So you received welfare costs and pension costs;
20 is that your testimony?

21 A At that stage of the game.

22 Q At that stage of the game?

23 A Yes.

24 Q And did the company tell you they had the Executive
25 Blue Cross Plan?

1 A Yes, they did.

2 Q And didn't they verbally explain to you what the
3 Executive Plan covered?

4 A I don't remember if they did.

5 Q You don't remember if they did?

6 A If they expanded on it, yes. They said call the --

7 Q They gave you the name of the carrier?

8 A No.

9 Q Of the Executive Plan?

10 A Yes, they said this --

11 Q You don't recall whether they expanded on that plan
12 or not?

13 A I don't think, I don't remember, no.

14 Q They didn't tell you what the coverage was under
15 that plan?

16 A No, I don't remember.

17 Q Did they tell you that plan, that they didn't have
18 a copy of the plan?

19 A They said if they didn't have a copy they would
20 get it through the insurance agent. There was no --

21 Q I just asked you did they tell you they didn't
22 have a copy of the plan?

23 A I don't remember. I know they said they would
24 contact the insurance agent. They didn't have a copy
25 for us.

1 Q Did they also give you the insurance agent
2 who you should contact?

3 A Not at all, never.

4 Q So they told you they would contact the insurance
5 agent? In fact they notified you of the plan that they
6 had when they gave you General Counsel's 12 in evidence;
7 isn't that correct?

8 A Yes. I knew they gave us the information.

9 Q Do you recall when this was given to you? Was this
10 on or about September 9th at that meeting?

11 A It was after the first meeting. Could have been
12 between the first and third meeting, yes, somewhere
13 around that time.

14 Q Between the first and third meeting would be the
15 second meeting?

16 A Could have been the second, right after it. I
17 stated during that period of time.

18 Q At that point, so you were aware at that point
19 that there was an Executive Indemnity Plan and you were
20 also aware of the costs of the welfare plan; is that
21 correct?

22 A Of that plan as it was applied then, yes.

23 Q You testified that you had received the cost of
24 the pension plan; is that correct?

25 A As it existed at that point.

1 Q And you also testified that you had received,
2 I believe, the pension trust agreement from the company?

3 A Yes.

4 Q Isn't it also a fact that you had received the
5 names, addresses, starting dates and rates of pay of
6 the employees who were in the unit by September 9th?

7 A The ones who were there at that time?

8 Q Yes.

9 A Yes, we had gotten the -- I'm not so sure we had
10 the addresses.

11 Yes, we had the addresses, we had the names, we
12 had the starting rates, the hiring rates. I think what
13 was missing was the classification, I think.

14 Q And you had their benefits; isn't that right?

15 A The benefits that existed in the company, yes.

16 Q That was given to you?

17 A Yes.

18 Q By letter?

19 A Yes.

20 Q And the classifications, the company told you they
21 didn't have classifications.

22 A That is correct.

23 Q When you asked about the tasks they reviewed the
24 tasks and as shows on the back of your notes for either
25 August 8th or September 9th, you copied down the tasks

1 of those employees; is that correct?

2 A That is correct.

3 Q Isn't it also correct that between the first and
4 third meeting you also received these specific
5 holidays --

6 A That is correct.

7 Q (Continuing) Of the employees?

8 A That is correct.

9 Q Isn't it also correct that you received wages for
10 the period 1971 through '74 for the employees?

11 A Rates of pay, yes.

12 Q Which would reflect increases which were given?

13 A That is correct.

14 Q And the vacations?

15 A Yes.

16 Q Directing your attention to September 9th, you
17 testified that the company had agreed to certain
18 provisions.

19 Isn't it a fact that as to the checkoff provision
20 the company had informed you that while they weren't
21 opposed to checkoff there would have to be a
22 modification in the language?

23 A No, they did not. They raised the question of
24 authorization. I said it was covered in the language
25 of the contract.

1 Q So that they had raised the question?

2 A I explained it to them and perhaps they did not
3 catch it and I explained the contract provided for that.

4 Q Again let me ask you, they did not tell you they
5 agreed because they raised the question; is that correct?

6 A No, they agreed, they raised the question and I
7 assumed on the basis of the question being asked, the
8 objection they raised, since it was covered that the
9 objection was dropped.

10 MR. KAUFMAN: Your Honor, I move to strike the
11 witness' assumptions.

12 JUDGE WEIL: No, on this case I will overrule it.

13 Q Did the company ever say to you after you explained
14 it to them at the meeting on September 9th "We accept
15 the checkoff provision"?

16 A They said it was okay, all they would want is
17 some language on it.

18 Q No, let me ask you again, let me ask you again.

19 They said it was okay and they wanted some language
20 and you told me that you explained to them the language;
21 is that correct?

22 A That is correct.

23 Q After they explained the language, you finished
24 explaining the language, did they say to you that
25 "it is acceptable to us"?

1 A No, but they didn't say it wasn't. They didn't
2 raise any more objections.

3 Q Now, can you tell me what the company said with
4 respect to union security on September 9th?

5 A They said it was no problem.

6 Q Those were his exact words, Mr. Tolmach's?

7 A Pretty much that.

8 Q When you say pretty much that, were there any other
9 words?

10 A No, it was very brief, there was no problem, it
11 is okay.

12 Q Could he have said to you that he wanted to get
13 back to that?

14 A No, he did not.

15 Q Directing your attention to overtime, was there
16 any discussion on overtime on that day?

17 A Yes, they pretty much disagreed with the whole
18 section.

19 Q They disagreed with the whole section?

20 A Pretty much.

21 Q When you say pretty much, did they agree to any
22 part of it?

23 A They raised objections on many parts of the section,
24 so in that respect I would say pretty much there was
25 objection to the whole section.

1 Q So it is your testimony that there was an
2 objection to the whole section on overtime; is that
3 correct?

4 A Practically, yes.

5 Q So that there was no agreement reached on overtime
6 at the September 9th meeting; is that correct?

7 A Unless I have notes in front of me to see if there
8 was a minor point they agreed to, you know.

9 I have to deal in absolutes.

10 Q What is your recollection right now?

11 A My recollection was that they had objected to a
12 major part of that section, you know. It was a section
13 that they had some problems with.

14 Q What paragraph, what section of your contract is
15 overtime?

16 A 7.

17 Q By looking at your notes on September 9th can you
18 tell us whether or not the company agreed to any of the
19 provisions in the overtime section?

20 A Subsection 1 would be the only one in which they
21 would agree. All the rest are objected to. There are
22 about, I guess, eight, nine subsections.

23 Q Do you know what Subsection 1 dealt with?

24 A No, offhand I don't. I would have to look it up.

25 Q So that 7i they said okay and the rest was no?

1 A Yes.

2 Q Is that correct?

3 A Yes, objected to.

4 Q Isn't it a fact that when the company discussed the
5 job tasks of these workers and they did explain to you,
6 I believe you testified, that there were no job
7 classifications; isn't that correct?

8 A The company said there was no job classification.

9 Q Didn't the company tell you that you should tell
10 them what the job classifications of the men should be?

11 A What they should be?

12 Q Yes.

13 A You can only do it on the basis of getting the
14 material from the company and then we would certainly
15 give our viewpoint on it, of course.

16 Q My question is a very simple one to you.

17 Did the company say to you that once you knew the
18 tasks you should tell them what the job classifications
19 of the men should be, yes or no?

20 A But we didn't get the tasks.

21 MR. KAUFMAN: I move to strike that as not being
22 responsive, your Honor.

23 JUDGE WEIL: I will strike it.

24 Listen to the question.

25 THE WITNESS: I'm sorry.

1 Q My question is a very simple question. Did
2 the company say to you after you received the tasks of
3 what the men do "You, union, tell us, company, what
4 their classifications should be"?

5 A I don't remember if they told us that but we had
6 given them a proposal which was made up on the basis
7 of what we understood the classification should be in
8 this shop.

9 We gave them in our proposal a classification system
10 and we had some idea in terms of how to slot people or
11 we wanted some input from the company.

12 Q Did you tell that to the company?

13 A Yes.

14 Q That you had an idea how to slot people in?

15 A Yes, but we wanted some input from the company.

16 Q On September 9th or August 8th the company gave you
17 the list of the names of the workers and their job
18 tasks as set forth in your notes?

19 A Right.

20 Q Which you have given to me; is that correct?

21 A That's right, they gave us some information.

22 Q Can you tell me what that word is in your notes?

23 A Looks like "something".

24 Q On September 9th can you tell me how the meeting
25 ended?

1 A Right now I don't recollect in terms of we agreed
2 to a date or not. I don't remember right now.

3 Q Do you recall under what circumstances the meeting
4 ended?

5 Had you reviewed everything you set out to do?

6 A Not wages, that had not been gone into. The wage
7 section was put aside by the company.

8 Q How did the meeting come to an end?

9 A I don't remember again in terms of -- if we had set
10 up a meeting.

11 It came to an end that we would go through most of
12 the sections of the contract.

13 Q Let me show you your notes.

14 Does that tell you how the meeting ended, of
15 September 9th?

16 A The meeting was set up for September 20th, yes.

17 Q Do you know under what circumstances the meeting
18 ended? Did it just come to an end and everybody got up
19 and said "We had enough, we have gone through these
20 sections of the contract" and it was agreed that "We would
21 have enough at this meeting" and go on to a separate date
22 for another meeting so that on September 9th you had
23 reviewed the contract?

24 A We got a response from the company.

25 Q You got a response from the company and it was

1 agreed that since you had gone through the contract
2 you would set up a date for another meeting and
3 everybody was agreeable to that; is that right?

4 A Well, the company had gone through it and they
5 felt that was enough for a meeting and we had gone
6 through --

7 Q Did you object?

8 A I didn't object, no.

9 Q Did you say "I want to stay here"?

10 A No, I did not say that.

11 Q So you agreed with the company that it was a good
12 time to break?

13 A I went along with them, let's put it that way.

14 Q You didn't object?

15 A I didn't object, no.

16 Q And a new date was set on the 20th; is that correct?

17 A That's correct.

18 Q Now, going back to the meetings on August 8th
19 and September 9th being held at the company attorney's
20 office, did you object to the meetings being held in
21 the company attorney's office?

22 A I did?

23 Q Where did you ask that the meetings be held?

24 A In the company.

25 Q And the company said they didn't want you at the

1 company?

2 A They said they didn't have the facilities for it.

3 Q They said they didn't have the facilities to meet
4 at the company?

5 A That's right.

6 Q Did they say to you that they would not meet
7 any place else?

8 A No, they did not.

9 Q Did you ever ask to meet at the union offices?

10 A No, we don't have the facilities either.

11 Q Did you ever ask to meet at a motel?

12 A No. I don't think we want to get ourselves that
13 expense.

14 Q So that after the company said that their company
15 premises were not available isn't it a fact that you did
16 not object to meeting at the attorney's office?

17 A We couldn't meet in the plant. I didn't object
18 to meeting in the company's office. I preferred meeting
19 in the plant where the men could see us negotiate, that
20 was the whole point of it.

21 Q If you couldn't meet at the plant then you had
22 no objection to negotiating in Mr. Tolmach's office?

23 A I never objected to that point of view, I just
24 preferred to meet in the company plant, that's all.

25 Q Isn't it also a fact that Mr. Tolmach was negotiating

1 without Mr. Gitlin on numerous occasions?

2 A That's true.

3 Q And isn't it a fact that during the times that Mr.
4 Tolmach was negotiating with Mr. Gitlin he entered into
5 many agreements?

6 A Yes, we got -- we arrived at agreement on some
7 clauses, yes.

8 Q Isn't it a fact that Mr. Tolmach had authority to
9 enter into these agreements?

10 A Yes, he said he did.

11 Q And he said he did?

12 A Yes.

13 Q Isn't it also factual that Mr. Tolmach did not have
14 to drive to beat the traffic and that the meetings were
15 held in his office?

16 A That's very true.

17 Q Isn't it also a fact that Mr. Tolmach did not mind
18 going past 5 P.M.?

19 A In terms of what? Saying it or what?

20 Q In terms of negotiating.

21 A No, I think most of the times when he was alone or
22 even with Bruce he had a headache or stomach ache.
23 He was fatigued and it was always a problem.

24 It didn't happen only once, it happened many times
25 where he had a stomach ache and headache and fatigued.

1 Q Let me ask you, on September 9th did he tell
2 you that he had a headache or he was fatigued?

3 A I don't remember, no.

4 Q Wasn't it your testimony that you had gone through
5 the whole contract and both mutually agreed that it was
6 time to end and set a new date?

7 A I didn't say it was time to end. The company went
8 through the response on most of the clauses of the
9 contract and they felt that was enough for the day.

10 It was the early part of negotiations and I wasn't
11 going to raise a big fuss in terms of let's stay on a few
12 more hours.

13 Q Let me show you your affidavit which you already
14 identified, the top of Page 11.

15 Just prior to setting a meeting for September 20th
16 is there any indication and did you tell the labor board
17 that Mr. Tolmach or Mr. Gitlin called the meeting off
18 for any specific reason?

19 A Do you want me to read this or what was the question?

20 Q Is there anything in that affidavit on Page 11 which
21 would indicate that on September 9th either Mr. Tolmach
22 or Mr. Gitlin called the meeting off because of a
23 reason of not feeling well or because of driving home?

24 A No.

25 Q In fact isn't that affidavit devoid of any reason

1 why the meeting was called off?

2 A The affidavit itself? I don't know.

3 You mean about this meeting?

4 Q About this meeting and does it say anything, no..

5 The affidavit says, and in fact doesn't the
6 affidavit state that after the parties had talked about
7 all these sections they agreed to meet again on the
8 20th?

9 A All the sections?

10 Q All the sections of the contract?

11 A Yes.

12 Q Again I ask you, to the best of your recollection
13 the way you have just told me is the way the meeting
14 ended; is that correct? You had reviewed all the sections
15 and the company said let us schedule another date and you
16 said fine or whatever it is and you didn't disagree with
17 them and then you picked the 20th.

18 JUDGE WEIL: You asked that question four times .
19 and the general counsel asked once and on every occasion
20 the answer has been the same.

21 Why do you ask it one more time? Why are you
22 getting all these things down three or four times when
23 there is no question they are the same?

24 MR. KAUFMAN: I believe they are different than the
25 general counsel.

1 JUDGE WEIL: Most of the questions you have
2 asked you got exactly the same answers and you nailed
3 them down very firmly.

4 MR. KAUFMAN: All right, I will go forward.

5 JUDGE WEIL: They are nailed down even if you do it
6 once, you know.

7 MR. KAUFMAN: I understand.

8 Q Now, was there a meeting on the 20th of September?

9 A I don't recall, you know.

10 Q Do you recall being handed proposals by the company?

11 A I have been given proposals, yes.

12 Q Do you recall coming to a meeting, being handed
13 proposals, looking at the proposals and walking out
14 of the meeting?

15 A Just like that?

16 Q Just like that.

17 A No, I don't recall that.

18 Q Do you recall cutting a meeting short after being
19 given proposals and after reviewing other items in
20 the contract and costs of welfare and pension?

21 Do you recall cutting a meeting short and leaving
22 after you had just been given proposals?

23 A No, I don't recall that.

24 Q So that you have no recollection of any meeting
25 being held on September 20th, although you do recall a

1 meeting scheduled for September 20th?

2 A Yes, that is correct.

3 Q Is that correct?

4 A That is correct.

5 Q Do you have any notes or minutes which would refresh
6 your recollection as to what transpired?

7 A I don't think so. I would have said it before.

8 Q Directing your attention to October 7th -- one
9 second, your Honor.

10 Would you tell me what happened on October 7th
11 at the meeting, what was discussed?

12 A I don't think I could without going back to notes
13 again.

14 Q Let me just ask you in particular, do your notes
15 reflect whether there was any discussion on the bargaining
16 unit?

17 A Yes.

18 Q Do your notes reflect what was said about the
19 bargaining unit?

20 A My notes are very brief.

21 Q Do you have any independent recollection of what
22 was said about the bargaining unit on October 7, 1974?

23 A Well, I know if an item was discussed I know the
24 positions taken by the company and the union.

25 Q Let me ask you specifically, on October 7, 1974 can

1 you tell me what the position of the company was
2 on the question of bargaining units?

3 A Yes. Specifically as much as I can remember anyway.

4 Q You have a memory of that meeting, October 7, 1974?

5 A I have a memory that when we discussed items it
6 was items of positions each party had on the items,
7 it wasn't just --

8 Q Are you telling me that the basis of your recollectio
9 is that you recalled the company's position as to various
10 items throughout the whole course of negotiations, or
11 is it your testimony that you could remember with
12 specificity what was talked about on that particular
13 date about the question of bargaining units?

14 A Well, it is a combination of both.

15 Q I am only interested in one. I am only interested
16 in October 7, 1974, what was said about the company
17 about bargaining units?

18 A We discussed bargaining units and I can tell you in
19 terms of what the arguments on both sides of the table
20 were, their position, our position.

21 Q Is it because you recall October 7th? Do you recall
22 what was said on October 7th with respect to
23 bargaining?

24 A It may be a particular time I can recall an
25 argument on a date and it may be because of the positions

1 by the company I can recall argument on position.

2 Q Let me ask you again, do you call specifically
3 October 7, 1974; do you recall that date?

4 A As a whole I can recall it but not as a specific
5 date. There's some dates that stand out, some don't.

6 Q So that you don't recall that as a specific date.

7 Do you recall that on October 7, 1974 you went
8 to negotiations with Milgo?

9 A Yes.

10 Q Do you recall that on October 7, 1974 you discussed
11 bargaining units?

12 A Yes, based on the notes.

13 Q Based on the notes?

14 A Right.

15 Q And the only way that you recall bargaining units
16 is based on these notes; is that correct?

17 A That is correct.

18 MR. EISENBERG: Objection.

19 MR. KAUFMAN: It is the witness' testimony.

20 MR. EISENBERG: Asked and answered 13 times.

21 MR. KAUFMAN: It is the witness' testimony. I

22 am trying to get it clear. He is not giving me a clear
23 answer.

24 JUDGE WEIL: I think it was very clear.

25 Q Would you read what that says under bargaining units?

1 A It says objected to, the last sentence.

2 Q Do you recall what was the last sentence on
3 bargaining unit?

4 A I believe it deals with the question of if it was
5 the work of erection, the work should be confined to
6 the job in the shop and not to erection units.

7 Q Was that the only conversation on bargaining unit
8 that was had on that date?

9 A It may have taken the most part of the discussion,
10 that is why I made a note of it.

11 We might have gotten into more discussion on
12 bargaining unit after that, but that was the one that
13 seemed to have the most emphasis on the part of the
14 company.

15 Q Do you recall any other discussion about any of
16 the other sections on bargaining unit?

17 A I will have to look at the notes.

18 Q Here are your notes.

19 On bargaining unit, just the section on bargaining
20 units. You testified about the last paragraph, about the
21 assignment of work.

22 Was there any other discussion on bargaining unit
23 is the question.

24 A Well, it wasn't only the question that the company
25 objected, that one section. They preferred and they

1 wanted their own position on the bargaining units.

2 Q Was that discussed on this date?

3 A And one of the reasons -- yes, the company would
4 state that they would want that position and one of the
5 reasons would be "We don't want to get involved with
6 other unions, we got the erection ourselves and we don't
7 want to be tied in that way, we want to be flexible."

8 The item we had with the labor board on the
9 election is good enough for us and these are some of the
10 reasons why we can't live with this section.

11 Q As a matter of fact, you were confused by the
12 company's position on bargaining units; isn't that correct?

13 A I don't know what you mean by that.

14 Q You didn't understand the company's position on
15 bargaining units; isn't that right?

16 A I don't know what you mean. You said it twice.
17 I don't know what you mean.

18 Q Let me show you your affidavit. Maybe you can tell
19 me what you mean.

20 A Okay, put the question. I will try.

21 Q I direct your attention to Page 11 under Line 10
22 from the bottom:

23 "I was confused about the company's position on
24 the bargaining unit. I don't remember if I asked the
25 company to clarify it re the previous NLRB language,

1 certification language".

2 Would you tell me what you meant by that?

3 A I think what I probably meant was that they were
4 asking for a position and still at the same time
5 objecting to a section of our clause which, you know,
6 one was somewhat contradictory to the other.

7 But that is the only thing I can think of that
8 would lead me to some confusion.

9 Q Did the company ever tell you that if they ever
10 move the plant or sold the plant they would negotiate
11 the effects of the move or the sale?

12 A No, they said at a later date that they would
13 negotiate a severance clause.

14 Q That was at a later date?

15 A Oh yes.

16 Q At this date they didn't mention that?

17 A No, that was sometime in '75.

18 Q Directing your attention to the end of the meeting
19 on October 7, 1975 could you tell me how that meeting
20 ended?

21 A Well, the meetings were short, every single one
22 of them.

23 Q I'm not asking about the length of the meeting.

24 A Okay.

25 MR. KAUFMAN: I move to strike that as not being

1 responsive to my question, your Honor.

2 JUDGE WEIL: It may be stricken.

3 Q My question is very simple.

4 Could you tell me how the meeting ended on October
5 7th?

6 A Well, in terms of setting up another date I don't
7 remember if we did or didn't.

8 In terms of who wanted to end the meeting, we
9 never wanted to end any meeting. It was only one
10 meeting I remember I cut short and that was to attend
11 a funeral of an officer.

12 Now, this meeting --

13 Q Let me ask you whether or not anybody from the
14 company, let me be a little more specific, did anyone
15 from the company or the attorney, Mr. Tolmach, give
16 any reason for ending the meeting early on October
17 7, 1974?

18 A I can't remember who, in terms of who. If it
19 wasn't for the question of the employer wanting to
20 beat the traffic it was a question of Dave not feeling
21 well.

22 Q Specifically on October 7, 1974 did Mr. Tolmach or
23 did Mr. Gitlin make any comment about either beating
24 the traffic or not feeling well?

25 A If Gitlin was there it was a question of the traffic.

1 Q No --

2 A I can't answer without looking at the notes to see
3 if he was there or not.

4 Q Let me direct your attention to your affidavit,
5 Page 14, just before the start of Paragraph 10:

6 "There was nothing else with respect to a contract
7 discussed at this meeting. Tolmach and I agreed to meet
8 on November 4, 1974".

9 Is there any mention in that affidavit that Mr.
10 Gitlin or Mr. Tolmach claimed that they had either to
11 beat the traffic or they had a stomach ache or a
12 headache?

13 A No, there's a lot of things not said in the
14 affidavit. I mean, I spent a day and a half on the stand
15 here and if it has to be equal to what I said he would
16 be writing for the rest of his life there.

17 Q Who took this affidavit?

18 A I think it was Jack.

19 Q Mr. Eisenberg?

20 A I believe so.

21 Q Did Mr. Eisenberg ask you how the meeting on October
22 7th ended when he took the affidavit?

23 A I remember he was writing as I was talking. I'm
24 not sure if he asked questions.

25 Q Did he ask to give him the particulars of the meeting?

1 how the meetings started and ended, what times
2 they started?

3 A I don't remember how it rolled on, I don't remember
4 how it rolled on.

5 Q But in any event you never said anything to Mr.
6 Eisenberg about the November 7th meeting?

7 A I don't remember if I said it to him or not, but
8 it is not in the affidavit.

9 There's a lot of things that took place at these
10 meetings that are not in the affidavit, not expanded on.

11 Q And as of this date you have no independent
12 recollection of how that meeting ended?

13 MR. EISENBERG: Objection. The question was already
14 asked and answered.

15 MR. KAUFMAN: What was the answer? Maybe you could
16 help me.

17 JUDGE WEIL: Overruled.

18 MR. EISENBERG: The record will so reflect.

19 A What specifically?

20 Q As of this date, today.

21 A No, I can't say it was because of Dave or because
22 of Gitlin. All I know it wasn't us and the meetings
23 were short because for one of these two reasons.

24 Q Well, you testified that on September 9th the
25 meeting was short because you had discussed everything

1 and you ran out of things to discuss and the company
2 said no.

3 JUDGE WEIL: Counselor, we are having trouble
4 enough making any headway without starting argument
5 about every answer that you get from the witness.

6 Argue to me in a brief at the end of this and you
7 might do yourself more good.

8 Q Directing your attention to the October 17 meeting,
9 1974, do you recall the meeting on that date?

10 A I have to look at the notes.

11 Q Did you attend a meeting on that date? I will
12 show you your notes.

13 A I believe I did, yes.

14 Q Do you have any recollection at this time how
15 that meeting ended?

16 A No. It was obviously a very short meeting.

17 Q Directing your attention to November 4th, is
18 that the date of the next meeting?

19 A I'd have to look. I think there was a meeting
20 on November 4th, yes.

21 Q Let me ask you this, just to go back for one
22 second.

23 On October 17th when that meeting ended, did you
24 agree to the date of November 4th?

25 A That would indicate, my notes would show there

1 was a meeting the date was agreed to.

2 Q Was there any discussion between you and Mr.
3 Tolmach as to scheduling of a date?

4 A Only from the point of view I had to take whatever
5 he had, only from that point of view.

6 That was the earliest possible date we could have.

7 Q Is there any reference in your affidavit on Page 14
8 discussing the October 17th meeting that you had to take
9 whatever date Mr. Tolmach had?

10 MR. EISENBERG: Objection. I have been liberal
11 in this regard but I don't see how whether there is
12 something in the statement or not whether there is
13 something alleged not to be in the statement, how that
14 can be used for whatever purpose it is being used here.

15 I don't believe any adverse inference can be
16 drawn from that.

17 MR. KAUFMAN: I think a material omission of a
18 fact goes to the credibility of a witness.

19 JUDGE WEIL: I would say the admission of a material
20 fact does.

21 MR. KAUFMAN: I stand corrected.

22 JUDGE WEIL: So I will sustain the objection.
23 I don't think that is material.

24 Q On November 4th can you tell me what happened,
25 at the November 4th meeting? Did it start in the afternoon?

1 A / November 4th? Yes.

2 Q What was the first item that was discussed?

3 A I don't know. I have to look at the notes.

4 I don't know if it was the first item but the
5 first section deals with Section 13 and there's a
6 reference to some other item and I don't know if it was
7 first or not.

8 It is a reference made that the money offer would
9 cover all the holidays and fund and the wages and then I
10 asked a question but does it cover coffee breaks or
11 reporting pay and the answer was no, it would not.

12 I don't know if it was the first item or not.

13 Q On November 4, 1974 did Mr. Tolmach ever tell you
14 he would only negotiate as to those items which the law
15 requires him to?

16 A Only negotiate those items the law requires him to?

17 Q That they would only agree to what the law
18 requires them to agree to?

19 A No. There was a remark about the law really from
20 Gitlin in terms of we asked for some humane approach
21 to some problems and he said "I will only do what the
22 law forces me to do", but --

23 Q What problems were those?

24 A I don't remember now. It may have been with the
25 firing of an employee.

1 I really don't remember, but I know he made
2 that remark once or twice and I think it was Gitlin, I
3 don't think it was Dave.

4 Q So that Mr. Gitlin with respect to the firing of
5 an employee had a discussion that was held between you
6 and the company said that he would do what the law
7 requires him to do; is that correct?

8 A That might have --

9 MR. EISENBERG: Objection, that already has been
10 asked and answered.

11 JUDGE WEIL: Not exactly. Read the question back.

12 (Whereupon the last question was read by the
13 reporter)

14 A I said it might have been the area in which he
15 made that remark.

16 He made that remark a number of times, once or
17 twice, twice at least, and I say it might have been
18 in relation to one of his workers that he had fired.

19 Might have been on something else.

20 Q Do you recall what the other thing was?

21 A No, I just can't at this point.

22 Q Isn't it a fact that Mr. Tolmach never made this
23 remark?

24 A I don't think he did. No, I don't remember Dave
25 making that remark.

3 A Yes, but Bruce got involved in some of the
4 discussion.

5 Q To the best of your knowledge can you state whether
6 or not Mr. Gitlin ever made that remark with respect to
7 an item that you were negotiating on?

8 A I can't remember at this point. It might have been.

9 Q You cannot remember; is that your answer?

10 A At this point. I can try to think of it and maybe
11 I will remember.

12 Q Do you recall if this remark was made on November
13 4th by Mr. Gitlin?

14 A No, I don't remember the time.

15 Q Let me show you your minutes for November 4th.
16 Does that tell you whether Mr. Gitlin was there?

17 A Gitlin was not here.

18 Q Gitlin was not there?

19 A No.

20 MR. KAUFMAN: Your Honor, it is five o'clock and
21 I have just finished, I believe, I am just about
22 finished with November 4th.

23 Would your Honor prefer me to finish?

24 JUDGE WEIL: Why don't you finish November 4th
25 so we can get out.

CSA Reporting

1 Q Was there any discussion on November 4th
2 about pension, welfare, job classifications?

3 Do you recall any discussion about that on November 4th?

4 A You say discussion or -- between two parties,
5 you mean?

6 Q Yes, did you make any remarks about either pension,
7 Blue Corss, Blue Shield or job classifications on
8 November 4th?

9 A If you are talking about if I made a request, I
10 probably made a request because at that point I still had
11 not received the coverage, the welfare program.

12 Q Can you state with certainty that you made a
13 request on that date?

14 A No, I can't unless --

15 Q Would your notes --

16 A They might. No, they don't reflect it.

17 Q They don't reflect it?

18 A No.

19 Q So that you cannot state with any degree of
20 certainty whether or not you made the request on those
21 dates?

22 A At this meeting.

23 Q At this meeting?

24 A Yes, at this meeting I can't say for sure.

25 Q Do you recall whether or not Mr. Tolmach presented

1 a wage increase proposal at this meeting?

2 A November 4th? I don't think so. It would be
3 reflected there. If it is not in my notes, rather.

4 Q Do you have anything in your notes on this?

5 A If a proposal was given us on the wage increase it
6 would be here.

7 No, I don't see it.

8 Q Do you recall how the meeting ended on the 4th?

9 A No, not unless I look in terms of the meeting
10 was set up or not.

11 I can't tell unless I look at the notes.

12 This is -- this is to the November 4th meeting?

13 Q I think so, but here --

14 A Let's take a look.

15 I believe I made a pitch for having longer meetings
16 at this meeting.

17 Q Is that in the notes?

18 A No, it isn't in my notes but I made a pitch for it.
19 I know that.

20 Q You recall making a pitch on November 4th for longer
21 meetings?

22 A Yes, I do, and more frequent meetings.

23 Q Do you recall under what circumstances the meeting
24 ended?

25 A No, I don't. Based on these notes I don't know.

1 Q Do you have any independent recollection?

2 A I do know that I made a pitch and I think the
3 company was aware that we were going slow and I think
4 in the next two meetings we -- I think I made a pitch
5 in the next meeting.

6 Q I'm talking about November 4th.

7 A I'm trying to remember now in terms of it was
8 either this meeting or the next meeting I made a pitch
9 for a longer meeting.

10 I'm not so sure whether it was the 4th or the
11 following meeting.

12 MR. KAUFMAN: I have finished with the November 4th
13 meeting.

14 JUDGE WEIL: We will break now until tomorrow
15 morning at 9 a.m.

16 (Whereupon and at 5:05 p.m. an adjournment was
17 taken until the following morning at 9:00 o'clock a.m.)
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BEFORE THE NATIONAL LABOR RELATIONS BOARD

29th REGION

In the Matter of:

MILGO INDUSTRIAL, INC.,

-and-

SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO.

CASE NO.
29-CA-461216 Court Street,
Brooklyn, New York,
Wednesday, March 31, 1976.The above entitled matter came on for
hearing commencing at 9:15 A. M.

BEFORE:

PAUL E. WEIL,

Administrative Law Judge.

APPEARANCES:

JACK D. EISENBERG, ESQ., Counsel for the General Counsel,
16 Court Street,
Brooklyn, New YorkARTHUR R. KAUFMAN, ESQ., Jackson, Lewis, Schnitzler &
and DAVID M. TOLMACH, ESQ., Krupman, Esqs.,
of Counsel. Attorneys for the Respondent,
261 Madison Avenue,
New York, New York 10016

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William Colavito

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David M. Tolmach

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GENERAL COUNSEL

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** Respondent's Exhibit No. 7 inadvertently marked as No. 6
but then referred to later as No. 7.

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P R O C E E D I N G S

JUDGE WEIL: The hearing will be in order.

Whereupon,

WILLIAM COLAVITO

called as a witness, having been previously duly sworn, resumed the witness stand and continued to testify as follows:

CROSS-EXAMINATION

BY MR. KAUFMAN:

MR. KAUFMAN: Would you mark this, please.

(Document marked Respondent's Exhibit No. 5 for identification, as of this date.)

Q Do you recall that at the meeting of November 4, 1974, the company made any offer to you with respect to vacation?

A It was either the 4th or the 12th they made three for eight proposal.

JUDGE WEIL: I'm sorry?

THE WITNESS: Three for eight.

Q Do you recall testifying during direct examination that the company made three for eight on the November 4th meeting?

A I said, you know, it is one or two meetings,

1 I believe.

2 Q Let me show you your notes from November 4th,
3 marked Respondent's Exhibit 5 for identification, and ask
4 you if that refreshes your recollection.

5 A Yes.

6 Q Can you now answer whether or not the com-
7 pany made such a proposal?

8 A Yes, it did.

9 Q It did?

10 A Yes.

11 Q Can you tell me under Paragraph 16, would
12 you read that for me, the first line?

13 A The company will move on the benefit at
14 least three weeks for eight years.

15 Q Can you tell me what at least three weeks
16 for eight years means?

17 A Well, it meant that there would be possibly
18 more than just that three weeks for eight years.

19 Q Did the company make an offer then or was
20 it just a discussion at that point?

21 A No, they said it would be at least three
22 years for eight years, at least they will do that.

23 Q Directing your attention to the next meeting,
24 do you recall when that was?

25 A I think it was the middle of November.

1 Q Do you recall the date?

2 A About the 12th; might have been the 12th.

3 Q November 12th?

4 A I think so.

5 Q Do you recall who was at that meeting?

6 A It was Dave and myself, as usual. I don't
7 know if Bruce was there.

8 Q Did the company make a wage offer at that
9 time?

10 A It is possible twenty-five cents wage in-
11 crease was offered. I know it was before the--before the
12 end of the year they made an offer. Might have been that
13 meeting or the following meeting.

14 Q There was no discussion of job tasks at that
15 time, was there?

16 A Well, yes, in relation to if there was any
17 discussion on the wage offer, there would be discussion
18 on tasks.

19 MR. KAUFMAN: Would you mark this, please.
20 (Document marked Respondent's Exhibit No. 6
21 for identification, as of this date.)

22 Q I show you Respondent's Exhibit 6 for iden-
23 tification, and ask you if you can identify that.

24 A These are my notes on the 11th, on the
25 November 12th meeting, and also notes on the 11/22 meeting.

1 Q Directing your attention to the meeting of
2 11/12, is there anything that indicates in your notes
3 that there was a discussion on job tasks?

4 A In the notes?

5 Q Yes.

6 A No, except that there was an offer of twenty-
7 five cents.

8 Q But there is nothing in those?

9 A No, no.

10 Q By the way, looking at the notes for the
11 11/12 meeting and under No. 16, three weeks, was that
12 crossed out? Is there a cross-out there up on the top?

13 A It might have been written in pencil and
14 was gone over with ink. I would do that sometimes.

15 Q Were the pencil notations added at a dif-
16 ferent time than the ink?

17 A Possibly, or -- possibly. Usually I would
18 write it in pencil sometimes and then go over it in ink.
19 I mean, in marker, rather. And sometimes I would add
20 notes after.

21 Q And to the best of your information then,
22 there is no change in what was written on Line 16, the
23 line numbered 16?

24 A Change of what took place?

25 Q Just the change. It says three weeks, eight

1 years?

2 A No.

3 Q I'm asking you whether the eight was changed.

4 A No, no.

5 Q How long did the meeting on November 12th
6 last?

7 A Usually, afternoon meeting, two hours I
8 guess, the most.

9 Q Two, three hours?

10 A Two hours, I think, the most.

11 Q Did the meeting end at four o'clock or five
12 o'clock?

13 A It was based on when they started.

14 Q By the way, were you able to find the 1974
15 diary?

16 A No, I can't. I looked in the house. It
17 is not anyplace there.

18 Q Did you check your car?

19 A The car doesn't have it. I checked the car
20 already.

21 Q So it is your testimony that as of this
22 point you do not know where the diary of 1975 is?

23 A No. It could be the office, the only place
24 it could be.

25 Q I thought you said you wouldn't have it in

1 the office.

2 A I said the only place it would be because
3 of a lot of papers in the trust agreement, or it could be
4 shuffled or lost.

5 MR. KAUFMAN: Could we go off the record?

6 JUDGE WEIL: Off the record.

7 (Discussion off the record.)

8 JUDGE WEIL: On the record.

9 Q Directing your attention back to the Novem-
10 ber 12th for a minute, would you tell me how that meeting
11 ended?

12 A I don't know if the meeting was set up, it
13 was probably set up. I can't recall unless I look at the
14 notes.

15 Q Do you recall what time the meeting ended?

16 A Around four or five o'clock.

17 Q Do your notes reflect what time the meet-
18 ing ended?

19 A No, it would not.

20 Q Your notes do not reflect that?

21 A I don't think so, no.

22 Q Do you recall if another meeting date was
23 set at that time?

24 A No, I don't recall, but it is possible that
25 a meeting date was set up at that meeting.

1 Q Directing your attention to the next meet-
2 ing which was November 22nd, could you tell me what time
3 that meeting started?

4 A The 22nd? I think that was a morning meeting

5 Q A morning meeting?

6 A Yes.

7 Q What time in the morning?

8 A We started -- that would be nine o'clock.

9 Q So that there were morning meetings; isn't
10 that correct?

11 A Yes, there was one morning meeting that year,
12 yes, there was.

13 Q Were there any morning meetings in 1975?

14 A We had a ten o'clock meeting in '75, the
15 first meeting in '75.

16 Q Directing your attention to the end of that
17 meeting, do you recall when the meeting ended?

18 A I know we didn't start until lunch. We
19 went past the lunch period and I guess it may have ended
20 early afternoon.

21 Q Could you tell me how the meeting came to
22 an end?

23 A Dave said he was going to draft what was
24 agreed upon and also some proposals; he needed two weeks
25 for that. After that he was going on vacation and he

1 would get in touch with us to arrange another meeting.

2 Q November 22nd was just before Thanksgiving;
3 isn't that correct?

4 A Around the end of the month, yes, Thanks-
5 giving is around the end of the month.

6 Q By the way, did you call your office?

7 A Yes, I did.

8 Q They are looking for it now?

9 A Yes, they are looking for it.

10 Q The 1974 calendar?

11 A Yes, yes.

12 Q And Mr. Tolmach said that he would get in
13 touch with you in about two weeks?

14 A No, he didn't say he'd get in touch with
15 me. He said he would send me the stuff in two weeks,
16 ten days.

17 Q Did he say three weeks?

18 A No, he said ten days in fact.

19 Q Ten days?

20 A Yes.

21 Q Did you wait ten days?

22 A I waited more. I waited almost 'til the
23 third week. It was after the two weeks had passed by and
24 I didn't get him, so I called. I didn't receive the
25 material.

1 Q You testified that you sent a letter to Mr.
2 Tolmach, is that correct?

3 A Not at that time. If I did, I was wrong.
4 Yes, not at that time.

5 Q So you did not send a letter to Mr. Tolmach?

6 A No, no, I did not.

7 Q Did Mr. Tolmach send you the material?

8 A No, he didn't until January 7th.

9 Q Well, he did send you the material, didn't
10 he?

11 A Oh, yes, of course.

12 Q And he sent it on January 7th?

13 A Yes.

14 Q You received the material, which was marked
15 as General Counsel's 15; is that correct?

16 A Yes.

17 Q Now, on November 22nd when Mr. Tolmach
18 said he wanted to draft new proposals, isn't it a fact
19 that he also said that there had been a lot of agreements
20 and that he wanted to reduce it all to writing and see
21 where the parties stood at that point?

22 A What he said was, he was going to draft
23 some material which would include what was agreed upon
24 as well as the new proposals.

25 Q And up to that point neither you nor Mr.
Tolmach had signed off on any documents as having been

1 agreed to, is that correct?

2 A No. We never initialed any.

3 Q You never initialed any?

4 A No.

5 Q Now, on January 7th you received that ma-
6 terial; is that right?

7 A Yes.

8 Q And Mr. Tolmach in his letter to you, which
9 is G. C. 14, asked you to call him; is that right?

10 A Yes.

11 Q You called him on the 29th of January; is
12 that correct?

13 A I don't know. I called him on the 29th
14 but I called him much before that, too.

15 Q Let me show you your diary.

16 When was the first time you called Mr.
17 Tolmach?

18 A About three days to a week after he gave
19 me the material; three days to a week after I got the
20 material.

21 MR. KAUFMAN: Would you mark this, please,
22 for identification?

23 (Document marked Respondent's Exhibit No.
24 for identification, as of this date.)

25 Q I show you this document marked Respondent's

1 Exhibit E for identification and ask you if you can iden-
2 tify it.

3 A It is my diary for '75.

4 Q For 1975?

5 A Right.

6 Q I direct your attention to January of 1975.
7 Does that diary indicate that you placed
8 any telephone calls to Mr. Tolmach?

9 A Yes, it does.

10 Q What does that indicate?

11 A It says I called Dave on the 29th,
12 he had been out of town for two days, wouldn't be back
13 until Friday.

14 Q Does it indicate there had been any calls
15 placed to Mr. Tolmach prior to the 29th?

16 A No, it does not.

17 MR. EISENBERG: Objection.

18 JUDGE WEIL: Overruled.

19 Q Now, after the 29th did Mr. Tolmach call
20 you?

21 A I called him.

22 Q Did you speak to him?

23 A Yes, I did.

24 Q When was that?

25 A Probably the Monday.

1 Q The 29th was Wednesday, so you say you
2 called him on Monday?

3 A Probably the Monday. Had to be a Friday
4 or Monday I called him; either one of those two days.

5 Q Did you speak to Mr. Tolmach?

6 A I did.

7 Q Did you set up a meeting at that time?

8 A No, I did not. What I conveyed to him
9 was that I had not received--first of all, I was disappoint-
10 ed it took so long to get the material as well as set up
11 the meeting.

12 Then it didn't include the economic offer
13 and I would like to get it; were they going to make one?
14 And I would like to set up a meeting also.

15 Q Let me ask you a question.

16 Didn't you testify that Mr. Tolmach on
17 November 12th had made a twenty-five cent wage offer?

18 A Yes.

19 Q Did you consider that to be an economic
20 offer?

21 A I didn't consider that to be adequate in
22 any sense and I told him about it.

23 Q You consider that to be an economic offer?
24 That is my question, not whether you agreed with it.

25 A It wasn't incorporated in the draft. Every-

1 thing that he proposed or agreed to that we agreed to,
2 and second, I disagreed with it, so I don't know what his
3 position was.

4 There was nothing there at all in what he
5 sent us on the 7th of January.

6 Q Didn't you testify that Mr. Tolmach had
7 offered Blue Cross-Blue Shield after one year to the
8 employees?

9 A Yes.

10 Q Did you consider that to be an economic
11 offer?

12 A I'm saying it was not included in the draft
13 he sent us.

14 Q So that the reason you said to Mr. Tolmach
15 there was no economic offer was because it was not in-
16 cluded in the draft; is that correct?

17 A In addition to part of the draft indicated
18 that there was a shift in renegotiating. I don't know
19 what his position was, wasn't in writing.

20 MR. KAUFMAN: Your Honor, I move to strike
21 that.

22 JUDGE WEIL: I won't move to strike that.

23 Q Had Mr. Tolmach made you an economic offer
24 in November?

25 A I said so, yes.

1 Q And that included Blue Cross-Blue Shield
2 and wages; is that correct?

3 A Yes, and the holidays, too.

4 Q And the holidays?

5 A I mean the vacation, rather.

6 Q So that on January 7th when you received
7 that package and before you looked at it, as far as you
8 were concerned there was an economic offer that was made
9 to you; is that correct?

10 A Yes, sure, before I even received that
11 draft, yes.

12 Q I show you the letter dated February 3,
13 1975, from Mr. Tolmach to yourself.

14 Did you receive that letter?

15 A I did.

16 Q Does that letter contain an economic offer?

17 A Yes.

18 Q And does that letter also say that there
19 was an agreed upon meeting for February 14th?

20 A Well, I don't know if we agreed upon it
21 over the phone or not. It was done in my office, either
22 way, because I know he had to get back to me in reference
23 to Bruce. So I checked with Bruce about the economic
24 offer and I checked with Bruce about the meeting.

25 Q Was there a meeting agreed to on February 3rd

1 when you spoke to Mr. Tolmach on the telephone or was
2 there not a meeting agreed to on February 3rd?

3 A I don't know if I agreed with him on the
4 phone or he made it over--

5 Q Did you set up a tentative date for a meeting?

6 A I don't remember that.

7 Q Can you tell me how the meeting was finally
8 set up then?

9 A No, I don't remember.

10 Q You don't remember?

11 A No.

12 Q Could it have been set up on February 3rd?

13 A My conversation with him?

14 Q Your conversation with Mr. Tolmach.

15 A It is possible. I know he told me he had
16 to check with Bruce and get back to me on the economic
17 offer as well as the meeting, on a meeting. I don't know
18 if we agreed to a date at that time or we checked with
19 my office and agreed upon a date. I can't remember that.

20 Q Do you recall whether or not the meeting
21 was held on February 14th?

22 A No, that was called off.

23 Q Who called that off?

24 A I believe the company called it off.

25 Q The company called it off?

1 A I believe so.

2 Q By the way, did you take a vacation during
3 that period?

4 A No, I didn't take a vacation.

5 Q I notice a notation in your diary that says,
6 "Spain."

7 A That's right.

8 Q Is that a client?

9 A No.

10 Q A company?

11 A No. I went with Paul O'Dwyer to Spain in
12 a protest meeting on some of the guys who were in jail
13 there, trade unionists.

14 Q How long were you in Spain?

15 A One day. Took a three-day trip. That's
16 all it was.

17 Q You say the company called off the meeting
18 on the 14th. Did they say why they had to call off the
19 meeting?

20 A I think it was the schedule. What else
21 would it be?

22 Q After the company called off the meeting,
23 did Mr. Tolmach agree to meet on any other date?

24 A I think he told the office he could meet
25 the 18th or 19th or the 28th.

1 Q The 14th was a Friday; is that correct?

2 A Yes.

3 Q Mr. Tolmach said that he could meet on the
4 18th or 19th, which would be the following Tuesday or
5 Wednesday?

6 A That's right.

7 Q So that there would be an interval of a
8 missed meeting of one working day, which would be--that
9 was not a working day, I'm sorry.

10 The 17th was George Washington's Birthday?

11 A Yes.

12 Q So that Mr. Tolmach was offering to meet
13 with you on the next available business day; is that
14 correct?

15 A Well, the dates there are self-explanatory.
16 Yes, the 14th, and the next would be the 18th, 17th or
17 18th, whatever it was.

18 Q He was offering to meet with you on the
19 19th?

20 A Right.

21 Q You also just testified that Mr. Tolmach
22 said he would meet on the 28th.

23 A Right.

24 Q Are you sure of that?

25 A Or the 28th.

Q Are you sure of that?

1 A Yes.

2 Q I show you your affidavit which has been
3 marked as Respondent's Exhibit 2 for identification and
4 ask you to read from, "however, on 2/11" --

5 MR. EISENBERG: What page?

6 MR. KAUFMAN: Page 25.

7 A Yes.

8 Q I ask you again, did Mr. Tolmach propose
9 to meet with you on the 28th?

10 A That was what I was told, yes.

11 Q Let me read the affidavit for you.

12 A I read it.

13 Q "However, on 2/11, the office received a
14 message from Tolmach, had to go out of town and would
15 meet on February 18th and 19th, but had to cancel the
16 2/14/75 meeting."

17 Do you have any mention there of the 28th?

18 A No, it doesn't say.

19 Q Is it still your testimony that Mr. Tolmach
20 agreed to meet with you on the 28th at that time?

21 A He gave me a choice of those dates, yes.

22 Q Those three dates?

23 A Those three dates.

24 Q It is your testimony, when you gave this
25 statement to the Labor Board that you told the truth?

1 A I tell the truth, yes.

2 Q Did you tell the Labor Board the 28th?

3 A May or may not have.

4 Q Was it in the affidavit?

5 A It is not in the affidavit.

6 Q Did you read the affidavit before you signed
7 it?

8 A I did.

9 Q Did you say to the Labor Board they left
10 out the 28th?

11 A No, I did not say that at all.

12 Q Now, I believe you testified that you had
13 your office call Mr. Tolmach to say that you could not
14 make it on either the 14th or 15th; is that correct?

15 A The 18th or 19th.

16 Q The 18th or 19th, I'm sorry?

17 A That is correct, yes.

18 Q And was a date set for the 28th?

19 A I said we could make it the 28th.

20 Q Was a date set?

21 A I believe it was.

22 Q Was there a meeting on the 28th?

23 A No, there was not.

24 Q What happened?

25 A It was set instead for the 3rd of March.

1 Q Was there a meeting then set for the 28th?

2 A It was set and was confirmed being the 28th
3 on the basis of alternate days that we could make; the
4 company eventually decided it should be on the 3rd, and
5 we--

6 Q Are you absolutely sure it was the company
7 that decided it should be on March 3rd?

8 A Well, we agreed to the company's proposal
9 for the 3rd.

10 Q Let me show you your affidavit, Page 25,
11 from the word "I could not make the 2/18 or 2/19."

12 Could you read that to yourself?

13 A Right.

14 Q Again I ask you, did Mr. Zito set up the
15 meeting for the 28th?

16 A He called to agree to get, to confirm the
17 28th date and it was eventually set up for the 3rd.

18 Q You have no idea why it was set up for
19 the 3rd; isn't that right?

20 A Because the company couldn't make it for
21 the 28th so they would make it for the 3rd.

22 Q I show you your affidavit again and ask
23 you, does your affidavit say the company could not make
24 it for the 28th and it had to be for the 3rd?

25 A No.

1 Q In fact, doesn't your affidavit read, "I
2 could not make the 2/18 or 2/19 proposed dates. I had
3 my office, John Zito, make an appointment for 2/28 with
4 Tolmach and an appointment was made by Zito, but it was
5 set up for March 3, 1975, at 10:00 A. M."?

6 A Yes, that is what it says.

7 Q Did you have a meeting on March 3rd?

8 A Yes, we did.

9 Q What did you discuss at that meeting?

10 A We discussed wages, I know, extensively.

11 Q Do you know what time the meeting started?

12 A Ten o'clock.

13 Q During that meeting you requested bonuses
14 for the first time; isn't that correct?

15 A I think we requested bonuses for an ex-
16 tensive period of years for the first time.

17 JUDGE WEIL: By your question and by your
18 answer am I to believe that what you are talking about
19 is he requested information with regard to bonuses?

20 MR. KAUFMAN: That is correct.

21 JUDGE WEIL: Very well.

22 Q Again, Mr. Colavito, I show you your af-
23 fidavit, Page 26, and ask you, didn't you tell the Labor
24 Board, "I also asked Tolmach for the first time informa-
25 tion as to what each employee had received in bonus for

1 the past four or five years"?

2 MR. EISENBERG: Objection. This question
3 was already asked and answered.

4 JUDGE WEIL: Overruled.

5 A I said, I told you before, the second or
6 third time, I requested for the first time bonuses over
7 an extensive period of time.

8 Q When did you request bonuses for the first
9 time?

10 A I asked him what he had given in bonuses
11 the last couple of years.

12 Q That is it?

13 A The last couple of years.

14 Q Just a general statement?

15 A Yes.

16 Q This time you asked for four or five years?

17 A Yes.

18 Q Was there any reason why you needed more
19 information this time than the first time when you made
20 your request?

21 A Yes. I had gone over the wage increases
22 for the employees and it was based on '71 to the current
23 period and I saw three employees received no way increas-
24 es from all that period of time, and I wanted to go back
25 and see what they were receiving in bonuses, to see if

1 there was some kind of consistency, so I wanted to supple-
2 ment that information.

3 Q Let me ask you. Back in September or at
4 the first meeting in August when you requested wages,
5 didn't you request wages all the way from 1971?

6 A Yes.

7 Q And in fact the company gave you the wages
8 all the way from 1971 at that point; isn't that right?

9 A Yes.

10 Q It is your testimony, as I understand it,
11 that as to bonuses, you just asked a general question?

12 A Well, for a couple of years.

13 Q A couple of years?

14 A That's right.

15 Q Did you ask anything about sick leave at
16 that meeting on March 3rd?

17 A I may have. I have to look at my notes.

18 Q Let me show you your notes.

19 MR. KAUFMAN: Would you mark this, please.

20 (Document marked Respondent's Exhibit 8
21 for identification, of this date.)

22 Q I show you Respondent's Exhibit 8 for
23 identification and ask you if you can identify that.

24 A Yes, the notes for the March 3rd meeting,
25 '75.

1 Q Does it indicate whether or not you asked
2 for sick leave?

3 A No, it doesn't say.

4 Q Does it indicate whether you made any
5 requests for material?

6 A Yes, it does.

7 Q What material does it indicate that you
8 requested?

9 A Additional names, the names of the new
10 employees, the bonuses of all which, you know, bonuses
11 of all employees as well as all those years; the work
12 descriptions. I think that is all the notes reflect
13 on requests.

14 Q I show you your affidavit marked Respon-
15 dent's Exhibit 2 for identification.

16 I direct your attention to the March 3rd
17 meeting.

18 MR. EISENBERG: Page, Mr. Kaufman?

19 MR. KAUFMAN: Starting on Page 25, No. 16,
20 at the bottom.

21 Q (continuing) Is there any mention in that
22 affidavit of the March 3rd meeting that you requested
23 sick leave?

24 A At the March 3rd meeting? No, there isn't.

25 Q So again I ask you, did you request sick

1 leave at the March 3rd meeting?

2 A I may have requested it.

3 Q You may have?

4 A Yes.

5 Q Is it just as so you may not have?

6 A Either one.

7 Q So you are not sure at this time whether
8 you requested it or not?

9 A No.

10 Q Could you tell me how long that meeting
11 lasted, from ten o'clock until when?

12 A I said we went through lunch. We didn't
13 start until early afternoon, I believe.

14 Q Will you tell me why the meeting ended?

15 A Why?

16 Q Yes.

17 A I think it was agreed that we had exhaust-
18 ed our discussion for that day.

19 Q As a matter of fact, didn't you have a
20 4:30 meeting?

21 A I may have.

22 Q In Mt. Kisco?

23 A At Mt. Kisco? No, I had a meeting in a
24 place in Mt. Kisco, yes, but it wasn't Mt. Kisco.

25 Q Where was the meeting?

1 A At our lawyer's office.

2 Q Let me show you your diary for March 3rd.
3 Does it indicate you had a meeting for 4:35?

4 A Yes.

5 Q That was in a place in Mt. Kisco?

6 A In a shop in Mt. Kisco.

7 Q To be held in a lawyer's office?

8 A Yes.

9 Q Where was the lawyer's office?

10 A Madison and 47th.

11 Q So that you had another appointment for
12 the afternoon; isn't that correct?

13 A 4:35, yes.

14 Q 4:35?

15 A Yes.

16 Q As that meeting broke up was there any
17 discussion? You said the parties had exhausted every-
18 thing they could cover in that day and it was agreed
19 to break up the meeting.

20 Did anything else happen on that day?
21 Was another meeting date scheduled; was there any other
22 discussion that you can recall now?

23 A Not more than what I said before. I think
24 a date was set at this meeting for the next meeting.

25 Q That was it?

1 A Yes.

2 Q So as I understand it, the meeting broke
3 up because the parties had exhausted their discussion
4 and a new meeting date was set?

5 A That is correct.

6 Q Directing your attention to the next
7 meeting, do you recall when that was?

8 A In the middle of March somewhere.

9 Q Do you recall the date?

10 A Not exactly, no.

11 Q I show you your notes. If I told you
12 March 14th, would that refresh your recollection?

13 A It might be the 12th or 14th; one of those.

14 Q Let me show you your notes.

15 A 14th, yes.

16 Q When did that meeting start?

17 A In the afternoon.

18 Q Do you know who was present at that meeting?

19 A I think Bruce was present.

20 Q Do your notes indicate who was present?

21 A No, but I remember Bruce was present.

22 Q And on 3/14 -- one section of the contract
23 is vacations, your proposed contract?

24 A 16.

25 Q Was there any discussion of vacations on

1 that meeting?

2 A I believe there was.

3 Q Did you discuss the company's proposal?

4 A Yes.

5 Q And what was discussed about the company's
6 proposal?

7 A Well, the company denied that they had gone
8 backwards on the proposal. They said they never made
9 a three for eight proposal.

10 Q Did you make any proposal?

11 A At this meeting?

12 Q Yes.

13 A No, I did not.

14 Q Let me show you your notes.

15 Under Paragraph 16, the number 16, does
16 that refresh your recollection as to whether or not you
17 made any proposal at that time?

18 A Well, not in program. It talks about pro
19 rata. If you call that a proposal--I don't know if you
20 call that a proposal. It talks about a pro rata, if a
21 guy gets terminated.

22 Q Does it not say one for each year after
23 two, top of six weeks, drop fund? Doesn't it say that?

24 A Yes.

25 Q Need pro rata, gets it terminated for any

1 reason?

2 A That's right.

3 Q Did you make that proposal on this date?

4 A I don't know if I made it that day or the
5 following meeting.

6 Q Is it on your notes for 3/14?

7 A Yes, it is, but there are notes which I
8 talked about proposing. That doesn't necessarily mean
9 I made it that day.

10 Q Are these notes that you made before you
11 went into the meeting now?

12 A Sometimes they were.

13 Q So, now, you made notes before you went
14 into meetings and notes during the meetings and notes
15 after the meetings; is that your testimony?

16 A I have a column there of notes that show
17 notes that were not set at the meeting, proposals.
18 You will find alongside that sheet.

19 Q Let me ask you. Is there any mention in
20 these notes that you discussed the company going back
21 on its proposal?

22 A Yes, one of these meetings I did, but I
23 think it was the meeting which Bruce attended, the first
24 meeting in that year.

25 Q I ask you to look at the minutes for 3/14

1 and tell me whether or not there is any indication in
2 those minutes the company had gone back on its proposal
3 on vacations.

4 A No, it doesn't reflect that, no.

5 Q When did this meeting end?

6 A In the afternoon. I don't know what time
7 it started, but it ended the usual time, between four
8 and five o'clock.

9 Q I believe you testified it ended when both
10 parties agreed it had enough for the day; isn't that
11 right?

12 A No, not at this meeting, I didn't say that.

13 Q Didn't you testify to that on direct?

14 A The 13th The 3rd.

15 Q The meeting, 3/12.

16 A 3/12, when both parties had enough?

17 Q Both parties had agreed to enough for the
18 day and the meeting set for the 26th.

19 A I don't know what you mean by "enough for
20 the day."

21 Q That is your testimony.

22 A All right, if you want to interpret that
23 enough for the day, if you mean we both felt there was
24 enough, that we exhausted everything for the day?

25 Q Yes, that is correct.

1 A I don't think so.

2 Q How did the meeting end?

3 A The usual way; one of the parties would
4 have to get out of town because of the traffic or be-
5 cause he was tired.

6 I says Bruce was there; more likely he
7 had to go.

8 Q When you say "the usual way," the usual
9 way meaning Bruce?

10 A Bruce or Dave, yes.

11 Q I show you your affidavit again, Page 29,
12 at the top, and it talks about the end of the meeting,
13 and I ask you whether or not your affidavit contains
14 any mention that the meeting ended with either Mr. Tolmach
15 or Mr. Gitlin saying they wanted the meeting to end.

16 MR. EISENBERG: Objection.

17 A No.

18 JUDGE WEIL: Overruled.

19 A (continuing) No, it doesn't say it.

20 Q In fact, the affidavit says, "Nothing else
21 was discussed at the meeting. At the meeting we agreed
22 to meet on March 26, 1975"; isn't that correct?

23 A That is factual, yes.

24 Q When was the next meeting?

25 A The end of the month, same month.

1 Q Was anything discussed at that time?

2 A The next meeting? Yes, we went over get-
3 ting information and so forth. It wasn't fully supplied
4 the previous meeting, I remember that.

5 Q So you received the remainder of the in-
6 formation you requested?

7 A Then got on the phone and the balance--they
8 said the '71 was not available for us on the bonus.

9 MR. KAUFMAN: Mark this, please.

10 (Document marked Respondent's Exhibit No. 9
11 for identification, as of this date)

12 Q Mr. Colavito, I show you Respondent's Ex-
13 hibit 9 for identification and ask you if you ever saw
14 that before.

15 A No, I never saw this.

16 Q You never saw this?

17 A No.

18 Q During March of 1975, did anyone ever read
19 down the names of the employees and the jobs which they
20 performed to you?

21 A Yes, I got some information at the middle
22 of the March meeting from Bruce, and some of the informa-
23 tion I got from Dave on the following meeting.

24 He went on the phone for it. We both went
25 on the phone for the information.

1 Q How long did the meeting last on March 26th?

2 A The usual time. It was an afternoon meeting.

3 Q By the way, who was present at the March 26
4 meeting?

5 A Bruce wasn't there. Dave was there and I
6 was there. I'm not sure if Schifano was there.

7 Q So Bruce wasn't there?

8 A No, he was not. The last meeting in March
9 he wasn't there.

10 Q How did the meeting end?

11 A It ended on the basis of -- short meeting,
12 Dave was fatigued or had a headache or something along
13 those lines.

14 Q You are absolutely certain that at this
15 meeting Dave said he was fatigued or had a headache and
16 had to leave?

17 A It was one of those. Not to leave, but he
18 had enough for the day.

19 Q He had enough for the day?

20 A Yes.

21 Q I show you your notes of the March 26th
22 meeting and ask you whether there is any indication there
23 that Dave had to call the meeting off for any reason.

24 A No, it wouldn't be in my notes.

25 Q I show you your affidavit, on Page 13, and

1 direct your attention to the middle of the page where it
2 talks about the meeting ending.

3 Is there any indication on that that Dave
4 called the meeting off because of a headache?

5 A No, it is not.

6 Q In fact, does that read, "The meeting con-
7 cluded, we agreed to meet on April 18, 1975"?

8 A No, we didn't. I don't think you are read-
9 ing it correctly.

10 Q "We agreed to meet on April 18, 1975 at
11 some point after the meeting."

12 A Yes, it was at another time.

13 Q So that according to your affidavit, there
14 is no mention of Dave having a headache and having to
15 break off the meeting?

16 A I don't think I wrote that down anywhere.

17 Q Now, when was the next meeting?

18 A I think April 13th would be the next meeting?

19 Q How was that meeting set up?

20 A By phone.

21 Q When?

22 A Sometime after that meeting. I don't know

23 when.

24 Q When was the meeting on April 18th held?

25 A What time you mean? Where? I'm sorry,

when?

1 Q When, the time?

2 A The time? In the afternoon. It was two
3 or three.

4 Q Who was at that meeting?

5 A I don't recall. Dave would be present,
6 myself.

7 Q Was there any discussion about job classi-
8 fications at that meeting on April 18th?

9 A Must have made a request. I made a re-
10 quest for it. I had not received it yet.

11 Q You say you must have made a request. Do
12 you recall making a request for job classifications at
13 the April 18th meeting?

14 A There was practically no meeting that went
15 by in which I did not make that request. Maybe one or
16 two meetings, that's all.

17 Q Is this one of the two meetings where you
18 didn't make the request?

19 A I don't think so.

20 Q Let me show you your notes of April 18th.

21 I ask you whether or not your notes reflect
22 that you made any request for job classifications, job
23 duties at the April 18th meeting.

24 A No, the notes don't say I made a request
25 for it.

1 Q Does that refresh your recollection as to
2 whether or not you made a request?

3 A No, it doesn't, not at all.

4 Q No?

5 A No.

6 Q Did you make any other requests at that
7 meeting?

8 A Well, the welfare program, we had not re-
9 ceived the pension clause, we had not received--

10 Q Let me show you your notes again.

11 Do your notes indicate that you made any
12 requests for welfare or pension costs?

13 A No, they do not.

14 Q Does that refresh your recollection as to
15 whether or not such a request was made?

16 A No, it doesn't.

17 Q I show you your affidavit on Page 1, deal-
18 ing with the April 18th meeting, and ask you whether your
19 affidavit indicates that you made any requests for job
20 classifications, welfare or pension on that day?

21 A Where does it start, the top of the page?

22 Q Yes.

23 A No, it doesn't say.

24 Q There is no indication in that affidavit
25 that you made that--

1 A Nothing specific. When we discussed wages
2 and classification, we discussed the wage increase, when
3 it should be effective.

4 Q You discussed the wage increase?

5 A Of course.

6 Q Isn't it a fact that affidavit contains
7 no specific language that you made requests for the job
8 classifications or the welfare and pension costs; is not
9 that correct?

10 A Nothing specifically said there about ask-
11 ing for classifications.

12 Q In fact, let me ask you this.

13 Didn't you testify yesterday that you had
14 received the welfare costs and pension costs in either
15 September or October, 1975; isn't that right?

16 A Well, the pension costs were received on
17 the basis of what their current costs of the pension was,
18 but I told the company with the new law they were mean-
19 ingless. We have no way of evaluating what it costs
20 them and to comply with the statutes being set up, and
21 we would have to have that.

22 Q Did you or did you not receive the welfare
23 and pension costs in September and October of 1975?

24 A Of their current plans, yes.

25 Q That is correct; isn't that so?

1 A Yes, yes.

2 Q Could you tell me, was a new date set for
3 that meeting, for another meeting, when that meeting
4 ended?

5 A I think we did.

6 Q Do you know when that date was for?

7 A May 2nd.

8 Q Did you have a meeting on May 2nd?

9 A I think we did.

10 Q Excuse me?

11 A I think we did, yes.

12 Q Was there any discussion on the vacation
13 period at the May 2nd meeting?

14 A The vacation period? I don't know. I
15 will have to look at the notes if there was any, if that
16 subject was touched upon.

17 Q I show you your notes which are marked
18 Respondent's Exhibit 3 for identification, and ask you
19 whether or not there was any discussion on vacation
20 period at the meeting.

21 A Yes, there was.

22 Q What was that discussion?

23 A It dealt with when vacations could be
24 taken.

25 Q That was the only discussion, is that

1 correct?

2 A No.

3 Q Was there another discussion on vacation?

4 A Well, as I said, it was either at the
5 previous meeting, one of the previous meetings in March
6 that we made the proposal; may have discussed that if
7 there were any changes in it, but that was the one that
8 got into a changed kind of discussion, discussion which
9 we got more extensively in.

10 They had a flat position on our previous
11 proposal and there wasn't much discussion on this, but
12 that got involved into some extensive discussion.

13 Q So that you can't recall whether it was
14 at this meeting or a previous meeting when that dis-
15 cussion took place; is that your testimony?

16 A On the period, we discussed the period,
17 definitely.

18 Q What is written here you discussed; is
19 that your testimony? What is written in your notes you
20 remember discussing?

21 A The period, yes.

22 Q The period?

23 A Yes.

24 Q When vacations could be taken, in what
25 period?

1 A That's right.

2 Q As to other items, you have no recollection
3 at this time whether it was discussed at this meeting
4 or another meeting?

5 A No.

6 Q Is that your testimony?

7 A I'm not saying that. I'm saying the exten-
8 sion of discussion would take place on what I have writ-
9 ten down. That is what I'm saying.

10 If I had any notes written down, it would
11 reflect a discussion that took an extended period of time.

12 Q Was there another discussion?

13 A I can't remember at this point.

14 Q Now, I believe you testified on direct ex-
15 amination that the meeting ended and a new date was set
16 for 5/9/75; is that correct?

17 A Yes.

18 Q Was there any discussion when that meeting
19 concluded?

20 A About what?

21 Q About the negotiations.

22 A You mean a summing up of some sort? I
23 don't understand your question.

24 Q Would you please tell me, from the time that
25 the meeting concluded to the time that a new date was

1 arranged or immediately thereafter, whether there was
2 any discussion between the parties as to the negotiations

3 A I don't remember.

4 Q Do you recall whether or not there was any
5 conversation concerning the slow progress of negotiations
6 on that date?

7 A I don't remember now.

8 Q Do you recall whether or not there was any
9 discussion that the meetings had been late in the day
10 because Dave was always tied up?

11 A Might have. You know, it was always a
12 problem in terms of getting a morning meeting, but --

13 Q Excuse me. My question is a very simple
14 question.

15 On that date do you remember making those
16 statements?

17 A I don't remember at this point, no.

18 Q Now, I believe you testified that a meet-
19 ing was set up for May 9th; is that correct?

20 A Yes.

21 Q Who called off that meeting?

22 A The company.

23 Q Isn't it a fact that your affidavit says
24 that you called off the meeting?

25 A Yes, I said it was a mistake.

1 Q Isn't it a fact that your notes indicate
2 that you called off the meeting?

3 A No, they do not.

4 Q I show you your diary, which has been
5 marked Respondent's Exhibit 6, and ask you, did you have
6 a meeting scheduled with Milgo on the 9th?

7 A It is not recorded in my diary.

8 Q It is not in your diary?

9 A No, because the meetings I kept on the
10 note paper, the meetings, and not recorded in the diary
11 yet.

12 Q When you say you didn't record it in your
13 diary, does that mean you didn't record the meetings
14 unless you went to them?

15 A No, no, because he called the meeting--
16 I think the meeting was on a Friday--and Monday I got
17 the message the meeting was off.

18 I never had a chance to record it in the
19 diary.

20 Q You don't record it on the day that you are
21 there?

22 A No, not always, no.

23 Q It is your testimony that Mr. Tolmach called
24 off that meeting?

25 A Yes.

1 Q Now, was another meeting set up?

2 A Yes, for the 20th, I think.

3 Q Who called off the meeting on the 20th?

4 A I did.

5 Q What was the reason for that?

6 A I had oral surgery just before that meeting
7 and I just couldn't make the meeting.

8 Q As a matter of fact, didn't you call off
9 meetings on the 9th and the 20th?

10 A No, I did not.

11 Q When was the next time the parties met?

12 A I think the end of May.

13 Q The end of May? Do you recall the date?

14 A Might have been the 29th.

15 Q The 29th?

16 A Might have been. I'm not sure. I'm not
17 really sure.

18 Q Isn't it a fact that on the meeting of the
19 29th you requested the company's sick leave practice?

20 A Possibly.

21 Q I show you your notes and ask you whether
22 or not you requested the company's sick leave practice?

23 MR. KAUFMAN: Let the record indicate that
24 I have given the witness his notes of the meeting of
25 May 29th.

1 A Yes, it does.

2 Q Did you request the sick leave practice?

3 A Yes.

4 Q Isn't it also a fact that the company re-
5 sponded to you that they have no official sick leave
6 practice, they give to whoever they want to?

7 A No, not at that meeting.

8 Q So that when you testified on direct that
9 that was the company's response, you were in error?

10 A That they have no sick leave practice?

11 Q That the company said they had no sick
12 leave practice.

13 A What they said was that they have to check
14 into what they do; they give it to some guys and some
15 they don't, and they don't know exactly how they do it
16 and at a later date they give it to guys who are not goof-
17 offs.

18 Q So that the company responded to your re-
19 quest; is that correct?

20 A Ambiguous, very ambiguous. I couldn't pin
21 it down, whether they had it or didn't have it. I didn't
22 know whether it was a practice or not. I couldn't pin
23 it down. They had to look at the records themselves.
24 They didn't know themselves.

25 The same with the compensation.

1 Q As a matter of fact, wasn't compensation
2 given to you in January?

3 A Compensation given to me in January?

4 Q Yes.

5 A Compensation practice, paying for the
6 people who went to--no.

7 Q Didn't the company give you a response to
8 that in January?

9 A No. I was asking for their practice, how
10 they employed the question of lost pay for a guy getting
11 injured.

12 Q I understand.

13 A It was never spelled out for me ever dur-
14 ing the whole course of the negotiations.

15 Q Did the company ever say on May 29th,
16 that meeting, that they would give you a proposal on
17 sickleave?

18 A They would give us a proposal? At the
19 May 29th meeting?

20 Q At the May 29th meeting.

21 A No, I think they had done that previously.

22 Q I ask you specifically on May 29th.

23 A I don't know.

24 Q You don't remember?

25 A I don't know if it was done at this meeting

1 or not.

2 Q If I show you your records --

3 A It might help.

4 Q (continuing) -- your notes, would that re-
5 fresh your recollection as to whether or not the company
6 ever said that?

7 A No. The notes would indicate that they
8 would give it to us? The notes don't say that.

9 Q The notes do not say that?

10 A They would give us a proposal.

11 Q And you have no recollection of it at this
12 time?

13 A At this point, no.

14 Q Was there another meeting scheduled after
15 May 29th?

16 A I don't know if it was set up at this meet-
17 ing or it was set up by phone.

18 Q Was it set up?

19 A We had another meeting set up, yes, but I
20 don't know when.

21 Q When was it set up for?

22 A The middle of June sometime.

23 Q Do you recall the date?

24 A 17th, 19th; something like that.

25 Q Was there a meeting?

1 A The meeting took place? No, the meeting
2 did not take place.

3 Q What happened to that meeting?

4 A Dave called up our office and said the
5 meeting had to be canceled because of some business.

6 Q Does your office usually take messages
7 when meetings are canceled?

8 A When they get an oral message, no matter
9 what.

10 MR. KAUFMAN: Mark this, please.

11 (Document marked Respondent's Exhibit No.
12 10 for identification, as of this date.)

13 Q Now, would you tell me what happened at
14 the time that meeting was called off? When did you re-
15 ceive word that it was called off?

16 A In the afternoon sometime.

17 Q Did you go to the meeting on that day?

18 A No, I think Schifano went.

19 Q Schifano went?

20 A Yes.

21 Q What time did you receive notification
22 that it was called off?

23 A Oh, I guess probably around the time of
24 the meeting was about to start or even after.

25 Q So you were going to be late for the meeting?

1 A Yes.

2 Q Do you know why you were being late?

3 A I was involved with negotiations.

4 Q Would that be with the Association?

5 A It would be with one of the associations,
6 yes.

7 Q Because they were heading towards the ex-
8 piration of a contract on June 30th, I think you testi-
9 fied; isn't that right?

10 A Their contract expired.

11 Q Did anyone from your office go to Mr.
12 Tolmach's office on the 19th of June?

13 A I think Schifano went.

14 Q Schifano?

15 A Yes.

16 Q Do you know if Mr. Schifano had any con-
17 versations with Mr. Tolmach that day?

18 A I don't know.

19 Q Do you know if Mr. Schifano expected you
20 to arrive on the 19th?

21 A Yes, he did.

22 Q I show you Respondent's 10 for identifica-
23 tion and ask you if you could identify that.

24 A Probably was a note given to me from the
25 office.

1 Q When you say the office, you mean your
2 office?

3 A Yes, my office.

4 Q That a meeting had been called off for
5 February 14th?

6 A Yes.

7 Q This was a note that they gave you that Mr.
8 Tolmach called off the meeting?

9 A Yes.

10 Q Do you have a similar note for the June 19th?
11 meeting?

12 A No.

13 Q There is no note in your possession?

14 A There is no note system in the office on
15 this.

16 Q Well, there was a note system in February?

17 A Well, just a note given to me, that's all,
18 and they retained it.

19 Q You don't know whether or not Schifano and
20 Tolmach discussed anything on the 19th or not; is that
21 right?

22 A No, I don't know.

23 Q Could you tell me who in your office told
24 you that the meeting was called off?

25 A One of the parties that was with me, one of

1 the executive board members made a phone call to the of-
2 fice to see if there were any messages and he was told
3 about the Milgo meeting being called off.

4 Q What exactly was the person told?

5 A He said the lawyer's office called. I
6 don't know if he used his name or not, but the meeting
7 is off.

8 Q Did they say why the meeting was off?

9 A Some business the company--the company had
10 some business that came up, the attorney had some business.

11 Q This is what the member of the executive
12 board told you?

13 A Was told, and it was told to me, yes.

14 Q At what time of the day was this told to
15 you?

16 A In the afternoon.

17 Q What time in the afternoon?

18 A I guess about between two, two o'clock I
19 think.

20 Q Did you attempt to call Mr. Schifano at
21 Mr. Tolmach's office?

22 A I called Dave's office, yes.

23 Q At what time?

24 A Oh, might have been between three and four
25 o'clock.

1 Q Did you speak to Mr. Schifano?

2 A No, I don't think he was there.

3 Q Had you attempted to call Mr. Schifano
4 beforehand to tell him not to come there?

5 A That time? No, I didn't.

6 Q Do you know if Mr. Schifano went to Mr.
7 Tolmach's office on that day?

8 A I think he did. My last impression was
9 that we went there.

10 Q Did Mr. Schifano tell you that he went
11 there?

12 A No, I don't remember now.

13 Q You don't recall whether Mr. Schifano said
14 he went there or not?

15 A I don't remember, no.

16 Q Did you ask Mr. Schifano?

17 A No, I didn't.

18 Q When was the next meeting?

19 A I think we arranged it for--I think we ar-
20 ranged it, Dave said he was busy and I think he arranged
21 it for the early part or sometime in July.

22 Q Early part of July? Do you recall--

23 A Or the middle of the July.

24 Q Do you recall when in July?

25 A I think it was the middle of July.

1 Q Do you recall the date?

2 A 18th or 20th; one of those dates, around
3 there.

4 Q Do you recall when Mr. Tolmach on 6/19
5 called your office or Mr. Tolmach's office called to
6 leave a message, did they tell what time Mr. Tolmach
7 called?

8 A No. In the morning, that's all I was told.

9 Q Just in the morning?

10 A Yes.

11 Q You have nothing written on that?

12 A No.

13 Q Had you called your office at all that day
14 prior to 2:00 P. M.?

15 A I had not, no.

16 Q No?

17 A No.

18 Q Do you recall when there was a meeting in
19 July?

20 A I said somewhere in the middle of the month,
21 I think.

22 Q Do you recall if it was July 11th?

23 A I don't really remember.

24 Q I show you Respondent's Exhibit 6 for
25 identification and ask you if you can identify that.

1 A The date?

2 Q I ask if you can identify that, if that re-
3 freshes your recollection as to when the meeting was
4 held, I'm sorry.

5 A Yes, there was a meeting on the 11th, yes.

6 Q How long did that meeting last?

7 A That was a short meeting. I had to leave.

8 Q You had to leave?

9 A Yes.

10 Q Is that because you had to go to a funeral?

11 A Yes. One of the officers died and I went
12 to a funeral.

13 Q Was another meeting scheduled at that time?

14 A Yes, I think it was. The meeting was
15 either the 18th or 20th, one of those days, towards the
16 latter part of the month or the middle of the month.

17 Q What happened at that time?

18 A I went to Dave's office and the secretary
19 said Dave wasn't there and she didn't think he was ex-
20 pecting me.

21 She didn't know the meeting was scheduled
22 but she gave me a phone number where I could reach Dave.

23 I called him. He apologized that he for-
24 got to cancel the meeting, but he said he would get back
25 to me the next day to arrange another meeting. He was

1 downtown somewhere.

2 Q One second.

3 After that meeting did not take place on
4 July 24th, did you hear from Mr. Tolmach?

5 A No, I did not.

6 Q Did you attempt to call Mr. Tolmach?

7 A Yes, we did.

8 Q When you say "we did," I ask you, did you
9 attempt to call Mr. Tolmach, you personally?

10 A Yes, I personally called the office.

11 Q What happened?

12 A I left a message. I had not heard from
13 Dave & all.

14 Q Do you know if Mr. Tolmach made any calls
15 to your office?

16 A As far as I know, he didn't, because I kept
17 calling back and we never got a message, and we finally
18 sent a letter out.

19 Q So that your office told you that they had
20 not heard from Mr. Tolmach; is that your testimony?

21 A That's right.

22 Q How many times did you call Mr. Tolmach?

23 A About at least two or three times, if not
24 more.

25 Q I show you your diary for July and August,

1 which has been marked Respondent's Exhibit 6, and ask you
2 if there is any indication in that diary that you attempt-
3 ed to call Mr. Tolmach?

4 A No, it is unusual that I would record it.

5 Q It is unusual?

6 A Yes; to record in my diary? Just if I
7 happen to have it in my pocket in front of me I may make
8 a note of it at that point.

9 Q Let me show you June, particular June 2nd
10 and June 4th.

11 Did you make notes on those days of trying
12 to call Mr. Tolmach?

13 A June when?

14 Q 2nd and 4th.

15 A Yes, there is a note here, and 4th, yes;
16 that is unusual, though.

17 Q It, in fact, says you made two calls.

18 A Okay, but it is unusual.

3 19 Q Certainly it didn't happen to be in your
20 pocket when you were making the calls because you did it
21 at some other time; isn't that right?

22 A I make, you know, during the course of a
23 year, I make a tremendous amount of calls. I'm out on
24 the field.

25 Q Let me also ask you. Did you also record

in January that you had called Mr. Tolmach?

2 A That's right, that's right.

3 Q Now, you sent Mr. Tolmach a letter; is
4 that correct?

5 A The office did, yes.

6 Q Did you ask them to send the letter?

7 A Yes, I did.

8 Q Did Mr. Tolmach respond to that letter?

9 A I think he did, yes.

10 Q Do you know if Mr. Tolmach suggested a
11 date for a meeting in his letter to you?

12 A I think it was just that he couldn't make
13 a meeting until the 3rd, and I told his office I had
14 negotiations with the Employers Association and that that
15 date was out of the question, the Federal Mediation was
16 set up, I believe.

17 Q I'm sorry?

18 A The Federal Mediation or the State Media-
19 tion, I don't know which organization, has set up a
20 meeting for us and I couldn't break it. So a different
21 date was selected.

22 Q I assume this was the date that was set
23 up by Mr. Zito with Mr. Tolmach?

24 A I guess so.

25 Q It was set up then for September 11th?

A

1 A Yes, I believe it was in the early part
2 of September.

3 Q On the meeting on 9/11, under what cir-
4 cumstances did the meeting end?

5 A What circumstances? I really don't remember
6 right now.

7 Q Do you know if another meeting date was
8 scheduled?

9 A It may have been.

10 Q Do you recall the date that it was scheduled
11 for?

12 A I know the next meeting was scheduled for
13 the 29th. I don't know if it was set up at that meeting
14 or after.

15 Q That was an agreeable date to both parties;
16 is that correct?

17 A Yes, it was a date that we agreed upon and
18 confirmed.

19 Q Was there a meeting on the 29th?

20 A No. I called David just before the meeting
21 was to take place and told him I had to go to an emergency
22 trustees' meeting. I could get there later on if he
23 preferred, or the next day. And he said, "Well, make
24 it tomorrow, Bill."

25 Q Now, did you meet on the 30th?

A

1 Q Isn't it a fact that on the 30th Mr. Tol-
2 mach said to you a decertification petition had been
3 filed?

4 A Yes, it was Bruce who said it to us.

5 Q Isn't it a fact Mr. Tolmach told you that
6 he did not know at this point whether it would be proper
7 and legal to continue negotiations?

8 A Well, he made it clear--I don't know if he
9 used that language--that, no sense in continuing negoti-
10 ations.

11 Q And didn't he say to you that you should
12 contact your attorney and ask your attorney whether it
13 would be proper to continue negotiations under the cir-
14 cumstances of a decertification petition?

15 A I don't know if he said consult your at-
16 torney, but he may have said it.

17 Q He may have said it?

18 A Yes.

19 Q Didn't he say that you should have your
20 attorney call him to discuss the decertification petition
21 as to whether there was an obligation to continuing bar-
22 gaining?

23 A I don't remember that. Our attorneys call
24 him?

25 Q Yes.

1 A I don't think so.

2 Q You don't think so?

3 A I don't think he said that.

4 Q Could he have said that?

5 A Could he have said it?

6 Q Yes.

7 A I don't see why he would say it. If he
8 was pretty sure.

9 Q I didn't ask you why he would say it. I
10 said, could he have said it?

11 A I don't think so. I don't think he said,
12 "Have him call me," or "Have the attorney call me."

13 Q Could he have said, "Have the attorney
14 call me, have your attorney call me if he feels that I
15 should continuing bargaining"?

16 A No, I don't think so, because I would have
17 transmitted it to our attorney, and, you know, they would
18 tell me one thing or call him.

19 Q Were you angry on this day?

20 A Angry? No, I wasn't angry.

21 Q Were you upset when the company made that
22 statement?

23 A I guess I had to be upset, sure.

24 Q Did you leave the meeting quickly? Was
25 there any other discussion?

1 A I think Bruce left before I did even. He
2 walked out in less than a five minute meeting; he walked
3 out before I did.

4 Q Did you stay behind to talk to Dave?

5 A Not for very long, no.

6 Q What did you and Dave talk about?

7 A Just that we spent a lot of time and we
8 had not worked out an agreement, that's all.

9 Q After September 29th, 1975, did you make
10 any attempts to set up any other meetings?

11 A After the 30th?

12 Q After the 30th. -

13 A With the company?

14 Q Yes.

15 A No.

16 MR. KAUFMAN: At this time, Your Honor,
17 I would like to move for the purposes of credibility,
18 Respondent's Exhibit 2, Respondent's Exhibit 6, 10, 4, 3--
19 maybe I should put this in order.

20 Can I have a minute and I will put this
21 in order?

22 JUDGE WEIL: Sure. We will take a ten
23 minute recess.

24 (Short recess taken.)

25 JUDGE WEIL: Back on the record.

1 BY MR. KAUFMAN:

2 Q Mr. Colavito, yesterday you testified
3 that you are the president of the union, is that correct?

4 A Yes.

5 Q And I believe that you testified that you
6 spend very little time in your office; is that correct?

7 A That's true.

8 Q How much time do you say you spend in
9 your office in a week?

10 A Well, if there is a meeting, I attend a
11 meeting. If there is an executive board meeting, twice
12 a month. There is a stewards' meeting, a membership
13 meeting, and I may have to run in sometimes, once in a
14 while, but basically that is what it is.

15 Q So other than to attend meetings, you do
16 not go to your office?

17 A Unless I have to, for some reason, pick
18 up materials, files.

19 Q During the period that you are not in
20 your office, how do you spend your time?

21 A Either out on the field meeting with dif-
22 ferent business agents or people, meeting employers,
23 meeting with workers, organizing, lawyers, trustees,
24 trust meetings, Albany, Washington.

25 Q Do you usually have meetings scheduled in

1 advance that fill up your calendar for any given week?

2 A Based on, for instance, a trust meeting,
3 and generally if it is an ordinary meeting, it is usually
4 three months in advance. We may have emergency meetings
5 that come up, so it is hard to say.

6 I don't have a full calendar month by month.
7 Like this, I knew this was coming up, so, you know, I
8 can anticipate this.

9 Q In fact, in June, July and August of 1975,
10 your calendar was pretty filled, wasn't it?

11 A On the contrary, no.

12 Q Let me show you your calendar.

13 A You said June? Yes, not August, though.

14 Q July was not filled?

15 A No.

16 Q June was filled?

17 A Oh, yes. I mean, I knew I had three or
18 four meetings, I had to concentrate on some meetings
19 that had to take place.

20 Q So for three or four weeks you were working
21 on the Association contract?

22 A Yes. Not every day, but, you know.

23 MR. KAUFMAN: Your Honor, at this time I
24 would like to put into evidence for the purposes of credi-
25 bility, Respondent Exhibits 2, 3, 4, 5, 6, which consists

1 of two pages, Respondent's Exhibit 8, which consists of
2 three pages, and Respondent's Exhibit 10.

3 JUDGE WEIL: Any objection?

4 MR. EISENBERG: No objection.

5 JUDGE WEIL: All right, they are all re-
6 ceived.

7 (Respondent's Exhibits 2, 3, 4, 5, 6, 8
8 and 10 for identification, received in evidence, as of
9 this date.)

10 MR. KAUFMAN: Your Honor, I would like
11 to offer into evidence Respondent's Exhibit 7 for iden-
12 tification, but only the pages January, June, July and
13 August, so that we can avoid putting in the whole book
14 and reproducing it. Those are the only pages I need
15 for my credibility purposes.

16 MR. EISENBERG: Can I take a look at
17 the book?

18 MR. KAUFMAN: Yes.

19 JUDGE WEIL: Any objection?

20 MR. EISENBERG: No objection.

21 MR. KAUFMAN: Can we go off the record?

22 JUDGE WEIL: Off the record.

23 (Discussion off the record.)

24 JUDGE WEIL: I will receive Respondent's
25 Exhibit 7, the pages for January, June, July and August.

1 However, was it your impression that those
2 could be photostated? I notice they are in various color
3 inks and I understand some colors don't photostat.

4 MR. EISENBERG: I don't know if it per-
5 missible to have it done here. I can't vouch for photo-
6 stating.

7 MR. KAUFMAN: I do not believe that the
8 colors of the ink are relevant for the purpose of which
9 I am putting them in.

10 JUDGE WEIL: If it doesn't come out at
11 all, we won't be able to read it.

12 MR. KAUFMAN: I understand, Your Honor.

13 JUDGE WEIL: I know some colored inks
14 don't reproduce. That is why I suggested that. I will
15 tentatively receive them, and may I suggest you either
16 give it a whirl on your Xerox or find out where you are
17 going to have it done and find out whether that can
18 be reproduced before we finish here.

19 MR. KAUFMAN: Fine. If General Counsel
20 can advise me of it and if I cannot reproduce them,
21 then I would ask for a little time to go outside and
22 find a company.

23 MR. EISENBERG: There is one right down-
24 stairs.

25 JUDGE WEIL: All right.

1 (Respondent's Exhibit No. 7 for identifi-
2 cation received in evidence, as of this date.)

3 JUDGE WEIL: Does that complete your
4 cross-examination of this witness?

5 MR. KAUFMAN: Yes, it does, Your Honor.

6 JUDGE WEIL: Any redirect?

7 MR. EISENBERG: Yes, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. EISENBERG:

10 Q Mr. Colavito, during cross-examination you
11 indicated that you had received certain pension cost in-
12 formation.

13 A Yes.

14 Q One of those earlier meetings?

15 A Yes.

16 Q I believe you testified that you requested
17 certain pension costs information.

18 A Yes.

19 Q Do you recall what specific cost information
20 you received?

21 A Received?

22 Q Yes.

23 A Received the cost of their pension plan at
24 that point, what the previous cost was, the last cost.

25 Q Do you remember the dollar figure given to you?

1 A No, I don't.

2 Q Did you ask for that information in any
3 particular form?

4 A The current costs, whatever they are paying.

5 Q Did you ask for it, though, in any particu-
6 lar form?

7 MR. KAUFMAN: Objection. The question
8 has been asked and answered.

9 JUDGE WEIL: No, it hasn't been answered.

10 Q By any specific method?

11 A They gave it to me verbally. The only
12 thing I had on the trusts, on pension, was the trust
13 agreements.

14 Q Let us stick to the cost.

15 A I'm just trying to remember.

16 Q Did you ask for it in any specific form?

17 A At that meeting?

18 Q When you initially made your request or
19 at any time before you actually received it verbally.

20 A I don't remember. I don't really remember.

21 Q But I also understood your testimony to
22 be that you continued on several occasions thereafter
23 to make a request for the pension costs.

24 A Oh, yes, yes.

25 Q And what specifically did you request?

1 A Requested their costs as they estimated
2 them in terms of the compliance with the law, the standards
3 of the law and they agreed that it would be radically
4 different, or different anyway in terms of what their
5 current costs were to take care of vesting and comply
6 with the law.

7 Q What law are you referring to?

8 A Generally for short called ERISA. I don't
9 know what the actual--I can't recall right now the actual
10 name of it. I think it is the Employees Retirement,
11 something like that.

12 Q Income and Security Act?

13 A Something like that. It is generally called
14 ERISA for short.

15 Q When you made these requests did the com-
16 pany give you a response at any time?

17 A Dave, Dave understood. He said he under-
18 stood there would be a question, it being different
19 under the new law, and we will get the cost to you.

20 I never said, "You got them already," or
21 every time I made the request he said, "We will get them
22 to you."

23 I understood what he was talking about.

24 Q Did you ever get that?

25 A We never got it.

1 Q The update on the costs as you requested?

2 A No, we never got that.

3 Q You also testified that at one of the first
4 two or three meetings you had some kind of discussion
5 on job tasks or job classification.

6 Can you specifically tell us what that
7 discussion was?

8 A Well, Bruce verbalized for each man and I
9 made some notes based on what he--

10 Q What did Bruce verbalize?

11 A He said, "For the sake of argument, we will
12 take one of the men, and he--he lays out, he is a lead
13 man, he operates a punch press, or this man is a hi-lo
14 or forklift."

15 Then he would say, somebody else, well, he
16 does the same thing as this guy, except that he may do
17 this.

18 Q Try to--

19 A I can't remember, you know. I would have
20 to have the thing in front of me. I made some notes on
21 that.

22 That was the characterization. That was
23 the way he would describe to me what the skills and the
24 responsibilities of the men were. And I said they were
25 not sufficient, they would not be -- reading it, give us

1 an idea of what the man's skills and responsibilities
2 were. And I wanted something in writing from him that
3 would do that.

4 Q You said you wanted something in writing?

5 A Oh, yes.

6 Q What specifically did you want other than
7 a description of somebody as a lead man or an operator
8 or a machinist? What actually did you want? What did
9 you say you wanted?

10 A What kind of a lead man, if he operated
11 a machine did he set it up, and what kind of machine was
12 it, the size of it, and did he select. And, for instance,
13 if it was a brake, did he select the guys, did he take
14 care of the material allowances for bending. Was that
15 his responsibility or was that somebody else's responsi-
16 bility?

17 Did he set up and let somebody run it or
18 did he run it in addition?

19 Did he decide on the sequence of bends,
20 if we discussed a bending operation or operating of a
21 brake.

22 Q What other things did you ask?

23 A Did he operate a sheer or did he operate
24 the sheer, somebody set it up for him, or did he decide
25 how a sheet should be cut to save material? Was he

1 responsible for that? Did he decide the grain, how it
2 should run because it had to be bent in a certain di-
3 rection, and if it was a stainless steel job or not?

4 I mean, just tell me that he operates a
5 sheer doesn't tell me anything.

6 Q You pointed that out to him?

7 A Yes.

8 Q On approximately how many occasions?

9 A Well, just that one occasion that we had
10 that discussion because we never ran into any discussion
11 that it wasn't--the material wasn't necessary, they
12 weren't going to give it to us.

13 Q So when you made subsequent requests for
14 the information relating to, and I will just character-
15 ize it general as job classifications, what did you say?

16 A I said, "Where is that material you promised
17 us on the job classifications and skills?"

18 "Well, we will get it to you. We will try
19 to get it to you."

20 Q That was their only response, they will
21 try to get it to you?

22 A They never opposed it. They said, "We
23 will get it to you."

24 Q When you got some kind of a writing on
25 September 25, 1975 --

1 A We got ~~on~~ the 29th I think we had received
2 it, the office.

3 Q I'm sorry. The 29th?

4 A The office.

5 Q You testified that they gave you the name
6 of the welfare plan at one of the earlier meetings.

7 A Yes, and in writing, too.

8 Q Did they tell you anything more about the
9 plan?

10 A That is all.

11 Q What did you request concerning welfare?

12 A The actual plan itself.

13 Q Did you ever indicate or say that a mere
14 description, the name of the plant, was insufficient?

15 A I kept asking for it all the time and they
16 said they would get it to me.

17 Q Did you ever get it?

18 A Never got it.

19 Q Was there any response as to why you never
20 got it from either Mr. Tolmach or Mr. Gitlin?

21 A Well, I think at the beginning they said
22 they have to get a hold of their agents and, you know,
23 as soon as -- the agents would get it to them, to us,
24 and after that, the insurance.

25 Q What agents?

1 A The insurance agents.

2 Q They never told you they didn't have a
3 plan?

4 A No, oh, no. In fact, they proposed ex-
5 panding it, liberalizing it, I should say, you know.

6 Q Mr. Colavito, I show you Respondent's
7 Exhibit No. 7, which is that calendar, and I want to
8 ask you to take a look for January and tell us for each
9 day that there was a prior arranged meeting that you
10 required. And first tell us what days there were prior
11 arranged meetings, and, if you remember, when and how
12 long they took?

13 MR. KAUFMAN: Objection.

14 JUDGE WEIL: For the whole--

15 THE WITNESS: The whole month?

16 JUDGE WEIL: --period? Let us have some
17 limitation.

18 MR. EISENBERG: I will withdraw that.

19 Q Mr. Colavito, when you say that you were
20 engaged in certain meetings in June, 1975, how many ne-
21 gotiating sessions, approximately, did you attend in
22 June concerning those Association bargainings?

23 A Well, for the whole month of June, and that
24 is an unusual thing for us because it is the expiration
25 of a three-year agreement, and there were, I think, five

1 or six sessions with one association and perhaps four
2 or five in another association.

3 Q That was June?

4 A That were set up, you know, in advance,
5 and that is unusual for us.

6 Q What about July?

7 A July, nothing.

8 Q You didn't attend any sessions?

9 A Well, we had--in fact, for the whole summer
10 we had one until September, that September meeting. We
11 had one in July and one in September with the Allied
12 Association and two with the other independent associations
13 for those two, three-month periods.

14 Q You testified that on various occasions in
15 1975, and earlier, Mr. Tolmach told you on various oc-
16 casions that he was busy.

17 Did he ever get more specific?

18 A Yes. He was in Hawaii a number of times.
19 He was in Alaska quite often. He was in Pennsylvania
20 a fairly extensive--contract expirations there. Those
21 places I remember where he was constantly flying.

22 Q When you set up any meetings did you ever
23 yourself suggest a date?

24 A I suggested an earlier date than what he
25 proposed, yes.

1 Q Do you remember what occasions and when?

2 A No, I can't remember that.

3 Q There was approximately a three-week gap,
4 maybe even longer, between the meeting on March 26th and
5 April 18th of 1975.

6 Do you remember how that April 18th meeting
7 came to be arranged?

8 A I think it was by phone. It wasn't ar-
9 ranged at the meeting prior.

10 Q Did you have anything to do with it?

11 A I don't remember that any more.

12 Q When you instructed somebody to set up a
13 meeting, what did you tell him?

14 A Well--

15 MR. KAUFMAN: Objection. Are we talking
16 now about in general or about this date?

17 JUDGE WEIL: That is a good question.

18 MR. EISENBERG: I will ask for this date.

19 A I don't remember if I got involved directly
20 and eventually spoke to Dave directly. The most usual
21 way it happened was--

22 MR. KAUFMAN: Objection to what the most
23 usual way was.

24 A (continuing) I really don't know what
25 happened here.

1 Q Do you recall any dates with specificity?

2 A Between March--

3 Q Let us go through it.

4 Can you recall how the May 2nd meeting was
5 set up? This was the next meeting after the April 18th
6 meeting.

7 A I know either between the March meetings
8 or between the April meeting and the May 2nd meeting,
9 one of those meetings was set up by phone. It wasn't
10 done at the meeting before.

11 Q Did you make the phone call?

12 A I can't recall.

13 Q You have testified on cross-examination
14 concerning the meeting--I believe it was on July 24th,
15 1975 -- where you attended by no one was there.

16 A Dave wasn't there, no. The company wasn't
17 there.

18 Q What did you do after that meeting when--

19 A After my conversation with Dave?

20 Q Yes.

21 A He was supposed to get back to me the next
22 day or Monday, I believe it was, either one of the two,
23 I don't remember, but I know he said the next day.

24 Not hearing from him, I made a number of
25 calls.

1 Q Did you ever speak to him?

2 A No.

3 Q When you called whom did you speak to?

4 A Usually the switchboard, and sometimes they
5 would switch me over to the secretary.

6 Q What did you say to the switchboard and/or
7 the secretary?

8 A I said he was supposed to get back to me
9 on a meeting, please have him call.

10 Q Did they say anything to you?

11 A They would take a message. They would
12 leave it.

13 MR. EISENBERG: Nothing else.

14 JUDGE WEIL: Anything further?

15 RECROSS-EXAMINATION

16 BY MR. KAUFMAN:

17 Q How many years have you been negotiating
18 labor contracts?

19 A I was elected in '64, so whenever the oc-
20 casion arose since then, I have been involved in some
21 contract negotiations.

22 Q You have been negotiating then since 1964?

23 A Yes, sporadic. Some years go by very
24 little and then some years very concentrated.

25 Q Let me ask you. You testified that on

1 September 29th you received the requested task information
2 from the employer, the job tasks.

3 A On September 29th?

4 Q Is that correct?

5 A I requested--there was no meeting on
6 September 29th.

7 Q Did you not say you had received in the
8 mail that morning the job tasks?

9 A Yes, we received some written document from
10 the company on that.

11 Q Are those the job tasks which you requested?

12 A No, it was practically the same thing they
13 gave me verbally.

14 Q I show you your affidavit, which is Exhibit
15 2 in evidence, and I ask you to point out to me where
16 you told the company you wanted this detailed breakdown
17 of all the jobs, if it is in there?

18 A It is not in there.

19 Q It is not in there?

20 A No.

21 Q So you never told the Labor Board that you
22 wanted that detailed breakdown; is that correct?

23 A Well, I didn't expand what took place on
24 everything I said in that statement.

25 Q Didn't the Labor Board ask you when it took

1 the testimony, to tell them what happened at the nego-
2 tiations?

3 A I'm sure if I told them what happened at
4 the negotiations it would be a hundred times thicker
5 than that.

6 Q But didn't they ask you that, what hap-
7 pened at the negotiations?

8 A They did.

9 Q Do you recall during direct examination
10 General Counsel asking you to tell him what happened on
11 August 8th and September 9th, what did each party say?

12 A Right.

13 Q Did you tell him at that time that you re-
14 quested these detailed explanations as to what each man
15 did?

16 A No, I did not.

17 Q You didn't think it was necessary at that
18 time either?

19 A No, because the company never opposed my
20 request. They never said, "What do you need it for, Bill?"

21 MR. KAUFMAN: Your Honor, I move to strike
22 the last part of that.

23 JUDGE WEIL: I will strike from "because."

24 Q Now, you testified that you had extensive
25 negotiations in June; is that correct?

1 A I had some meetings in June.

2 Q Extensive?

3 A Well, whatever it is you want to call it.

4 Q Didn't you testify that most of your month
5 was taken up with negotiations for the Associations?

6 A I said that I had five to nine or ten
7 meetings between the two groups in the month of June.

8 Q Let me ask you this. As president of the
9 union, if there is a strike, do you visit the various
10 shops and the picket lines?

11 A If I have the time I do.

12 Q You do?

13 A If I have the time, but most of the time I
14 don't.

15 Q Did you visit them in July and August of
16 1975?

17 A July? I don't get involved too much in--
18 I don't get involved too much in terms of visiting picket
19 lines and so forth.

20 Q You testified that if you have the time,
21 you do?

22 A Yes.

23 Q Did you have the time to visit in July?

24 A Let me see where I went.

25 I don't think there were too many picket

1 lines I visited in the month of July.

2 Q Is that because you didn't have the time?

3 A I was concentrating on more important
4 things because people were taking care of that responsi-
5 bility.

6 Q Because you didn't have the time, you would
7 be concentrating on more important things?

8 A Not because I didn't have the time. We
9 had responsibilities that someone has to coordinate.
10 We make choices. You always have to make choices.

11 Q As president of the union did you have
12 meetings with your men in July and August, of those men
13 on strike?

14 A Yes.

15 Q How often did those meetings occur?

16 A We had shop stewards' meetings and member-
17 ship meetings at least once a month and we would some-
18 times have active meetings, the active guys.

19 Q Did you have meetings with the strikers?

20 A Strikers? They were part of the general
21 membership meetings and stewards would represent them
22 at the stewards' meetings.

23 Q Did you have special meetings for the
24 strikers?

25 A We may have had. I don't know about in

1 July, but we would expand our stewards' meetings and
2 incorporating other active members.

3 So our stewards' meetings would have re-
4 presentative meetings, committees from different shops
5 that required more active participation.

6 Q I think you testified that there are approx-
7 imately 160 shops which your union represents; is that
8 correct?

9 A That is correct.

10 Q How many members are there in those 160
11 shops?

12 A Oh, I guess between, you know, various
13 places, on unemployment, say between --it can go up to
14 2500 to 2700.

15 Q How many of those members were out on strike
16 during July and August and September of 1975?

17 A Well, it changed because contracts were
18 being settled, but you go by July 1st, there is a cutoff
19 date. You could have about 1800 to 2,000. If you went
20 by the 2700 figure, it would be between 1800 and 2,000;
21 something like that.

22 Q Did you have your business agents visiting
23 each of the shops that were on strike each day during the
24 course of the strike?

25 A We had what we called area committees, which

1 included very active people in the union, supplementing
2 the activities of the business agents.

3 Q Who coordinated their activities?

4 A Generally, I did.

5 Q You did?

6 A I'm the general coordinator.

7 Q Did you meet with them?

8 A Yes, we were in touch with each other.

9 Q How long did you meet with them?

10 A Whatever the situation required.

11 MR. KAUFMAN: I have nothing further.

12 JUDGE WEIL: Thank you. You may step
13 down.

14 (Witness excused.)

15 JUDGE WEIL: Anything further?

16 MR. EISENBERG: I have no further wit-
17 nesses at this time.

18 JUDGE WEIL: Very well. General Counsel
19 rests.

20 The moving finger points at you.

21 MR. KAUFMAN: At this time, Your Honor, I
22 move to dismiss the complaint for failure to prove a
23 prima facie case.

24 JUDGE WEIL: Denied.

25 MR. EISENBERG: Your Honor, at this time

1 I had spoken to Respondent's representatives off the
2 record and I requested that they turn over to General
3 Counsel their calendars and diaries they have for 1974
4 through 1975, specifically Mr. Tolmach's.

5 Mr. Tolmach had indicated to me that he
6 would do so, and I also requested a copy of Mr. Tolmach's
7 bargaining notes.

8 I do have copies of certain things that
9 were given to me, but Mr. Tolmach also indicated that
10 at that time he had no opposition to that.

11 MR. TOLMACH: No problem.

12 MR. KAUFMAN: Your Honor, I wish to point
13 out that Mr. Tolmach may be relying on these notes, as
14 Mr. Colavito had to, for the purposes of giving testi-
15 mony and may be relaying on his diary for that purpose.

16 I have no objection to turning it over once
17 Mr. Tolmach has completed his direct examination.

18 MR. EISENBERG: If Your Honor would permit
19 me, the appropriate time to go over those matters, I have
20 no objection.

21 JUDGE WEIL: I will permit you to examine
22 any document and I take it Mr. Tolmach is going to take
23 the witness stand.

24 I will permit you to examine any document
25 he looks at before he looks at it. To that you have a

1 MR. TOLMACH: Your Honor, we gave him a--

2 MR. EISENBERG: Basically, Your Honor,
3 my question was, before I did cross-examination, if I
4 would be permitted a certain short amount of time to
5 look over things that they agreed to submit.

6 JUDGE WEIL: I haven't had any problem
7 about giving anybody time to examine documents.

8 MR. EISENBERG: No. In that case I will
9 withdraw my remarks, Your Honor.

10 MR. KAUFMAN: May we have five minutes
11 so I can confer with my--

12 JUDGE WEIL: You can have ten if you need
13 it.

14 (Short recess taken.)

15 JUDGE WEIL: On the record.

16 MR. KAUFMAN: I call Mr. David Tolmach.

17 Whereupon,

18 DAV M. TOLMACH

19 called as a witness, having been first duly sworn by
20 Judge Weil, was examined and testified as follows:

21 JUDGE WEIL: State your name and address.

22 THE WITNESS: David Michael Tolmach, 7
23 Davidson Avenue, East Rockaway, New York.

1 DIRECT EXAMINATION

2 BY MR. KAUFMAN:

3 Q What is your occupation, Mr. Tolmach?

4 A I'm an attorney.

5 Q What law firm are you with?

6 A Jackson, Lewis, Schnitzler & Krupman.

7 Q Does the law firm of Jackson, Lewis, Schnitz-
8 ler and Krupman represent Milgo?

9 A Yes, they do.

10 Q Did you do any work for Milgo?

11 A Yes, I did.

12 Q What was that?

13 A Negotiated, attempted to negotiate a
14 labor contract.

15 Q Can you tell me when negotiations commenced?

16 A Yes. The first meeting was August 8th,
17 1974.18 Q When was the first time that you received
19 notification, if you remember, that the union was re-
20 questing negotiations?21 A Approximately the middle of July I received
22 a call from Bruce Gitlin and he notified me that he had
23 received a letter from the union.24 Q Was Milgo operating at the beginning of
25 July?

1 A No, they were shut down for two weeks.

2 Q Mr. Gitlin called you when you returned
3 from vacation?

4 A Yes.

5 Q After you received notification from Milgo
6 that they had received a letter, what did you do?

7 A I asked Bruce to send the letter to me
8 that he had received from the union.

9 Q What did you do after that?

10 A I told Bruce to answer the union's request
11 for information and I answered the letter myself.

12 Q I show you General Counsel's Exhibit 3 in
13 evidence and ask you, is that the letter which you sent
14 to the union?

15 A Yes, it is.

16 Q What is that date?

17 A July 24th.

18 Q And did you ask the union in this letter
19 to contact you to set up a date?

20 A Yes, I did.

21 Q Did you suggest that the meeting be held
22 in your office?

23 A Yes.

24 Q Did the union contact you?

25 A Yes, they did.

1 Q Do you know who contacted you?

2 A I don't recall.

3 Q You had a conversation with someone from
4 the union?

5 A Yes.

6 Q Was a date set up for the meeting?

7 A Yes.

8 Q When was that date?

9 A August 8th.

10 Q Did the union object in any way to the
11 date of August 8th?

12 A No, it did not.

13 Q Was a time set up for that meeting?

14 A Yes.

15 Q What was that?

16 A Early afternoon, two o'clock, I think.

17 Q Did the union object in any way to the
18 time?

19 A No, it did not.

20 Q Did you discuss the time with the union?

21 A Not at that time, not in the letter, no.

22 Q Or your telephone call?

23 A Or the telephone call.

24 Q Now, did you attend all of negotiations
25 between Milgo and the union?

1 A Yes, I did.

2 Q Do you know whether or not the company
3 mailed the wage rates and classifications to the union
4 along with the benefits?

5 A Yes.

6 Q I show you General Counsel's 4-A in evidence
7 consisting of three pages.

8 Did you receive a copy of that mailing from
9 the company?

10 A Yes, I did.

11 Q Did that contain the names, addresses,
12 starting dates and rates of pay of the employees?

13 A Yes, it did.

14 Q Along with the fringe benefits of the
15 company?

16 A That is correct.

17 Q You testified that the meeting was set for
18 2:00 P. M. on August 8th. Did the meeting take place on
19 August 8th at 2:00 P. M.?

20 A The meeting started approximately 3:10.

21 Q What was the reason for the meeting starting
22 at 3:10?

23 A Late arrival of the union.

24 Q What happened at that meeting, generally?

25 A The union handed us the Association contract.

1 Q Did they tell you it was the Association
2 contract?

3 A He said that it was.

4 Q Then what happened?

5 A I glanced through the contract and asked
6 several questions concerning the language of the contract.

7 Q Was anything else done at that meeting?

8 A No.

9 Q Let me ask you. Did the union make any
10 requests for job classifications at that meeting?

11 A Not that I can recall.

12 Q Do you have notes on the meeting?

13 A Yes, I do.

14 Q Would your notes reflect that?

15 Mr. Tolmach, would your notes reflect that?

16 A No.

17 Q Would looking at your notes refresh your
18 recollection on that?

19 A No, they would not.

20 Q Do you know if the union asked for the wage
21 increases for the past, since 1971, at that meeting?

22 A No.

23 Q Did the union make any request at that meet-
24 ing for material or documents?

25 A No.

1 Q So that at that meeting there was a dis-
2 cussion, the union handed you over their contract and
3 you discussed it generally and that was the meeting?

4 A Yes.

5 Q Was anything said about another meeting?

6 A No.

7 Q There was no meeting date set at that time?

8 A No.

9 Q How did the next meeting come about?

10 A " The next meeting came about, I received
11 a call from Mr. Colavito on the 19th of August and I
12 returned the call on the 20th.

13 He asked for specific information at that
14 time and also we arranged to have the meeting after the
15 Labor Day weekend.

16 Q What information did he request?

17 A I don't recall, although I would have re-
18 corded it in my notes.

19 MR. KAUFMAN: Your Honor, may the witness
20 examine his notes?

21 THE WITNESS: Yes.

22 MR. EISENBERG: May I see them, Your Honor?

23 MR. KAUFMAN: First let the witness look
24 at them and then you can see them.

25 JUDGE WELL: He has a right to see them

1 before the witness.

2 MR. KAUFMAN: I'm sorry.

3 THE WITNESS: Here.

4 JUDGE WEIL: He always has a right to
5 do that.

6 BY MR. KAUFMAN:

7 Q Can you tell us what was requested in
8 telephone conversation?

9 A The holidays, the pension, insurance cover-
10 age, rate increase and job functions.

11 Q Was a meeting set at that time, another
12 meeting date?

13 A Yes, it was.

14 Q To what date?

15 A September 9th.

16 Q Mr. Tolmach, I show you General Counsel's
17 Exhibit 12 in evidence and ask you if you can identify
18 that.

19 A Yes, I can.

20 Q What is that, please?

21 A It is a handwritten memorandum discussing
22 holidays, rate increases over a period of 1971 to 1974,
23 the listing of the company's health and welfare plan,
24 and the present vacation schedule at that time.

25 Q Was this given to the union?

1 A Yes, it was.

2 Q When was that?

3 A That was at the 9/9 meeting.

4 Q Can you tell us, in connection with the
5 9/9 meeting, if the parties reviewed the contract at
6 that time, union contract proposals?

7 A That is correct.

8 Q Let me ask you this.

9 I notice from General Counsel's Exhibit 12,
10 which I just showed you, that there was no mention of
11 job classifications although you say the union had re-
12 quested that.

13 Was there any discussion at the 9/9 meeting
14 on job classifications?

15 A Yes. We informed the union that the com-
16 pany did not have written job classifications, that it
17 was a rather small company and that we would be willing
18 to tell them what the individuals that worked for Milgo
19 did.

20 Q And did you tell them?

21 A Yes, we did.

22 Q Did you go over each individual and what
23 the individual did?

24 A Yes, we did.

25 Q Did the union object to that type of procedure?

1 A It did not.

2 Q Did the union say they wanted more specific
3 information?

4 A No, they wanted us to develop a classifi-
5 cation system and we told them that we wanted the flexi-
6 bility to move the people around, and if there was going
7 to be any classification system that they could come up
8 with it.

9 However, we wanted it broad enough to have
10 the flexibility that we had in the past.

11 Q Was there any discussion about a pension
12 plan at that meeting?

13 A We handed the union the pension trust
14 agreement.

15 Q Was there any discussion of costs at that
16 meeting?

17 A I would have to refer to my notes.

18 Q Please do so.

19 A Yes, there was.

20 Q Did you give the union the cost of the
21 pension agreement, the pension at that time?

22 A No, I did not.

23 Q Did you tell them--

24 MR. EISENBERG: Excuse me, Mr. Kaufman.

25 Are you questioning about the September 9th meeting?

1 MR. KAUFMAN: Yes.

2 MR. EISENBERG: I notice Mr. Tolmach was
3 looking at his notes on the September 20th meeting.

4 THE WITNESS: That is why I said I did
5 not give him the cost.

6 MR. EISENBERG: I just wanted the record
7 to reflect that.

8 BY MR. KAUFMAN:

9 Q Did you tell them anything about getting
10 them the cost of the pension plan?

11 A Yes, we said we would contact the people
12 that we had to and get back to them on the cost figure
13 the next meeting.

14 MR. KAUFMAN: Your Honor, I think the
15 record should also reflect that when a witness is refresh-
16 ing his recollection, he could refer to the New York Times
17 if that would refresh his recollection, and the fact that
18 Mr. Tolmach may have turned to 9/20, has no significance
19 other than that if it refreshes his recollection as to
20 the 9/9 meeting, then it is proper.

21 JUDGE WEIL: Go ahead. Having said it,
22 the record now discloses this, doesn't it?

23 MR. KAUFMAN: I don't know if it does.

24 JUDGE WEIL: That is your position at any
25 rate.

1 BY MR. KAUFMAN:

2 Q You were telling us about the pension
3 plan, the cost of it.

4 What was that? Not the cost of the pen-
5 sion plan; you told the union you would give them the
6 cost?

7 A Yes.

8 MR. EISENBERG: Objection. You are lead-
9 ing, Mr. Kaufman.

10 Q Was there any discussion--

11 JUDGE WEIL: Overruled.

12 Q Was there any discussion about the Blue
13 Cross plan?

14 A No, other than the fact that we had the
15 Executive Indemnity Plan.

16 Q Did Mr. Colavito raise any questions about
17 the Executive Plan?

18 A No.

19 Q Did Mr. Colavito ever request a copy of the
20 plan at that time?

21 A No, he did not.

22 Q You testified that you reviewed the union's
23 proposals; is that correct?

24 A That is correct.

25 Q I show you General Counsel's Exhibit 5 in

1 evidence. Is that a copy of the proposals which the
2 union presented you with?

3 A Yes, it is.

4 Q Are those the proposals that you reviewed
5 with the union?

6 A Yes, both the August 8th and the Septem-
7 ber 9th meetings.

8 Q Before going into the areas, some of the
9 areas that you reviewed, did you have any discussion
10 with the union relative to any groundwork for the nego-
11 tiations, any ground rules for the negotiations?

12 A Yes. I suggested to the union that in
13 order to prevent any misunderstandings, based on past
14 experience, that we reduce it to writing, both parties
15 could look at it and initially that language that we had
16 tentatively agreed to, pending the outcome of the negdi-
17 ations.

18 Q Did Mr. Colavito agree to that?

19 A No.

20 Q Directing your attention to the review of
21 the proposed union agreement, in connection with the
22 article on bargaining units, which is Article 1, Section 1,
23 was there any discussion on bargaining units?

24 A Yes, there was.

25 Q Could you tell us what that discussion was?

1 A Basically, it was a difference of opinion
2 as far as my outlook on this section and the union's,
3 the language submitted to the company went beyond the
4 bargaining unit as spelled out by the National Labor
5 Relations Board in the election that was held at the
6 company.

7 The bargaining unit is spelled out in
8 the union's language, extended to the work involved,
9 and it had an overtone of subcontracting in it, and
10 basically, that was our disagreement.

11 MR. EISENBERG: I move to strike that an-
12 swer as not being responsive to the question.

13 I believe the question was, what was the
14 discussion, not the characterization of the proposals.

15 JUDGE WEIL: I won't trike.

16 Q Directing your attention to Section 4,
17 union security, on Page 4, was there a discussion on
18 the union security clause?

19 A A brief discussion.

20 Q Can you tell us what the discussion was?

21 A Basically, I told the union that we would
22 give them some type of union security and that was--it
23 was a very, very brief discussion on that point.

24 Q Did you ever tell them that you would agree
25 to their union shop provision under their union security

1 clause?

2 A No, I did not.

3 Q Are there different forms of union securi-
4 ty, as you know it?

5 A Yes, there are.

6 Q Was there any discussion on Section 5
7 of the agreement, checkoff?

8 A Brief discussion.

9 Q What was that discussion?

10 A Basically, the union wanted checkoff and
11 at that stage of negotiations I was unwilling to give it.

12 Q Did you agree to checkoff at that date?

13 A I did not.

14 Q Directing your attention to Page 7 of
15 the agreement, overtime--

16 A Yes.

17 Q Was there any discussion on overtime?

18 A Not really, not on the 9/9 meeting.

19 Q Did you agree to any of the provisions in
20 the overtime section at the 9/9 meeting?

21 A I did not.

22 Q Mr. Tolmach, on the meeting of August 8th,
23 did the union ever request bonuses from the company?

24 A Did not.

25 Q Did the union ever request sick leave policy

1 of the company at that meeting?

2 A No.

3 Q At the meeting of 9/9, did the company
4 ever tell the union that they would make a proposal on
5 sick leave?

6 A They did not.

7 Q On 9/9 can you tell me how the meeting
8 ended; approximately what time did it end, do you recall?

9 A Approximately five o'clock.

10 Q Under what circumstances did it end?

11 A We had gone through the questions that we
12 had to ask in order to draft counter-proposals. It
13 was a mutual agreement to end the meeting.

14 Q Did Mr. Gitlin ever say he had to leave
15 in order to beat the traffic home?

16 A No, he did not.

17 Q So that it was mutually agreed upon to
18 end the meeting at that time?

19 A Yes, it was.

20 Q Did you ever say you would not meet past
21 five o'clock at that time?

22 A No.

23 Q Do you recall if another meeting was set
24 at that time?

25 A I think we set a meeting up for the 20th

1 at that meeting.

2 Q The 10th meeting was mutually agreed upon?

3 A Yes.

4 Q Did the union object to that date?

5 A No.

6 Q How was the meeting set up?

7 A In almost all cases there was mutual agree-
8 ment between the parties.

9 MR. EISENBERG: Objection. I move to
10 strike that answer. I don't believe that was responsive,
11 a mere characterization.

12 I believe the question was how--

13 JUDGE WEIL: I won't strike it. It is
14 not helpful, but I won't strike it.

15 Q As to this particular meeting, do you re-
16 call how the meeting was set up for the 20th?

17 A We agreed on the 20th, Mr. Colavito and
18 myself.

19 Q Did the union object, that they wanted
20 an earlier meeting?

21 A No, it did not.

22 Q Was there a meeting on the 20th?

23 A Yes, there was.

24 Q Can you tell me what happened on the 20th?

25 A Yes. At the beginning of the meeting I

1 handed Mr. Colavito the proposals that I had drafted.

2 Then we went into some other material and
3 then got back to our contract language.

4 Q Did you discuss the Blue Cross-Blue Shield
5 plan at the September 20th meeting?

6 A Yes.

7 Q What did you say with respect to that?

8 A We gave them the cost of the plan.

9 Q Did the union request the plan at that
10 time?

11 A No, it did not. We had already given the
12 union a plan as far as the specific name of the Blue
13 Cross-Blue Shield, of the Blue Cross-Blue Shield plan.

14 Q Did you discuss the pension plan at that
15 time?

16 A Yes. We gave the union a copy of the
17 pension trust agreement as well as the cost of the plan
18 itself.

19 Q Did anything else happen on the 20th?

20 A Yes.

21 Q What was that?

22 A I started to review with Mr. Colavito the
23 various sections, explaining the reasons.

24 Q When you say "the various section," --

25 A Of our proposal.

1 MR. KAUFMAN: Your Honor, I may be able to
2 save some paper work if I could have the witness compare
3 the proposals which he gave Mr. Colavito to the proposals
4 which were marked into evidence, and if they are the
5 same, I won't have to introduce this.

6 JUDGE WEIL: Why don't you do that? Do
7 you want to do it off the record?

8 MR. KAUFMAN: Sure.

9 JUDGE WEIL: Off the record.

10 (Discussion off the record.)

11 JUDGE WEIL: On the record.

12 MR. KAUFMAN: Mark this, please.

13 (Document marked Respondent's Exhibit No. 11
14 for identification, as of this date.)

15 Q I show you Respondent's Exhibit 11 for
16 identification and ask you if you can identify that.

17 A Yes, I can.

18 Q Can you tell us what that is?

19 A This was our first set of proposals which
20 I handed to Mr. Colavito at the September 20th meeting.

21 MR. KAUFMAN: Offered.

22 JUDGE WEIL: Any objection?

23 MR. EISENBERG: No objection.

24 JUDGE WEIL: It is received.

25

1 (Respondent's Exhibit No. 11 for identifi-
2 cation received in evidence, as of this date.)

3 Q Did there come a time when you started to
4 discuss these proposals with Mr. Colavito?

5 A Yes.

6 Q What happened at that time?

7 A When you say "these proposals," the entire
8 group of proposals?

9 Q You said that you gave Mr. Colavito the
10 proposals; is that correct?

11 A Yes, and at the 9/20 meeting, after we had
12 reviewed some of the other material and I started to re-
13 view the proposals for him, he said -- he cut the meeting
14 short saying that he would have to get to his attorney
15 to review the language and he would get back to me to
16 set up the next meeting.

17 Q That is how the meeting ended?

18 A That is how the meeting ended.

19 Q Mr. Tolmach, during the course of that
20 meeting when you gave the union the pension information
21 in terms of the cost of the pension plan, did the union
22 ever tell you that they wanted other information with
23 respect to the pension plan?

24 A No, they did not.

25 Q Did they ever say to you they wanted new

1 clauses under ERISA?

2 A No, they did not.

3 Q Do you recall when the next meeting was?

4 A I think it was set for the early part of
5 October. It was October 7th.

6 Q Do you know how this meeting came about?

7 A Approximately a week after our meeting,
8 Mr. Colavito called and we arranged the meeting.

9 Q Was there any discussion on the October 7th
10 meeting about the bargaining unit clause?

11 A I would have to refer to my--

12 Q Would you do that, please?

13 Can you answer that now?

14 A Yes.

15 Q Was there discussion on the bargaining unit
16 clause?

17 A Yes, there was.

18 Q Would you tell us what that discussion was?

19 A Basically, I pointed out to the union there
20 were two differences; one dealt with--

21 Q When you say two differences, you mean what
22 you were proposing and what the union proposed?

23 A Yes. One dealt with nailing down the spe-
24 cific place of business.

25 The other was the desire of the union to

1 extend that bargaining unit to cover erection type of
2 work.

3 At this meeting we discussed our language
4 in which I wanted the bargaining unit to read the same
5 way as the unit set by the National Labor Relations Board.

6 Q Was there any discussion about the company
7 putting in a clause under the bargaining unit?

8 A Yes, there was.

9 Q What was that discussion?

10 A The discussion was that this contract
11 should specifically--I told Mr. Colavito that the con-
12 tract should specifically cover the employees in the shop.

13 Q Did you ever tell Mr. Colavito that if the
14 shop moved you didn't want the burden of the men in the
15 union going with them?

16 A No, I didn't.

17 Q Was there any discussion on union security
18 on that date?

19 A No, there was not.

20 Q Did you ever tell the union that Mack Gitlin
21 had changed his mind and did not want to give them a
22 union shop clause?

23 A No, I did not.

24 Q Was there any discussion about the company's
25 proposed management's rights clause?

1 A He would not--Mr. Colavito would not dis-
2 cuss language regarding management rights.

3 Q What about the checkoff clause?

4 A May I refer to my notes?

5 Q Yes.

6 A No, no discussion about checkoff.

7 Q Do you recall at what time the meeting
8 ended?

9 A I'd say around 5:00, 5:30.

10 Q Under what circumstances did it end?

11 A We reviewed the material that we had to
12 and the meeting ended.

13 Q Did Mr. Gitlin ever say at that time that
14 he wanted to beat traffic home?

15 A No.

16 Q Did Mr. Colavito ever say that the meetings
17 always started late and he wanted to keep going?

18 A No. As a matter of fact, during our first
19 meeting I suggested that the meeting start in the after-
20 noon for the simple reason that my work would be cleared
21 for the day and we could go on into the early evening or
22 as late as they wanted to.

23 Q And you told that to the union?

24 A Yes.

25 Q Did Mr. Colavito ever complain about your

1 unavailability to meet at that time?

2 A No.

3 Q Do you recall if another meeting was sched-
4 uled at that time?

5 A Yes, there was one set up for later on in
6 the month.

7 Q Do you recall the date?

8 A Not offhand. I would have to refer to my
9 calendar.

10 I think it was for the 17th.

11 Q Do you recall what time the meeting started
12 on the 17th?

13 A Approximately two o'clock.

14 Q Do you recall who was present?

15 A Myself, Bruce Gitlin, William Colavito.

16 Q What was discussed at that meeting?

17 A We reviewed various parts of our proposal.

18 Q Was there any discussion on visitation?

19 A Yes, I think there was some discussion on
20 visitation.

21 Q Can you look at, and I show you Respondent's
22 Exhibit 11 in evidence, and I ask you if your notes indi-
23 cate that there were any changes by the company made on
24 the visitation clause at that meeting.

25 A Yes.

1 A We changed the union representative must
2 first call the factory manager for an appointment, and
3 it would change to read the union representative must
4 first call the factory manager for an appointment and it
5 was changed to read the union representative must first
6 notify a management representative, so we changed in
7 that regard.

8 Q Any other change?

9 A No. There was a change on October 7th.

10 Q Do you recall any other clause being dis-
11 cussed at that time other than visitation?

12 A There was some discussion on seniority,
13 as I recall.

14 Q Were there any changes made by the com-
15 pany in its proposal?

16 A Yes. I have some contract language on the
17 desk where I--

18 Q Will you get that for us?

19 A Yes. There was a lengthy discussion on
20 seniority.

21 Q And did the company make any changes in
22 its proposal?

23 A Yes, we did.

24 Q What was that?

25 A Basically, we were going to pick up some more

1 of the union's seniority language. However, we are still
2 maintaining the 120 day provisional period.

3 Q About what time did this meeting break?

4 A I would say around 5:00, 5:30, after about
5 three, three and a half hours in negotiations.

6 Q Was there any statement by either you or
7 Mr. Gitlin that the meeting had to break because you
8 had to beat traffic?

9 A No.

10 Q Was a date for the meeting mutually agreed
11 upon, the next meeting?

12 MR. EISENBERG: Objection.

13 Q How was the date for the next meeting arrived
14 at?

15 A Again, as we did in almost all cases, he
16 agreed to November.

17 Q Did both parties use their calendars togeth-
18 er to try to arrive at a date?

19 A Yes.

20 Q Directing your attention to the next meet-
21 ing date, do you recall when that was?

22 A Again I have to refer to my notes.
23 November 4th.

24 Q At what time did that meeting start?

25 A The calendar -- 2:30.

1 Q Was there any discussion about the company's
2 vacation proposal with respect to the union's vacation
3 demand at that meeting?

4 A Yes, there was.

5 Q Could you tell us what that discussion was?

6 A I told Bill that we would improve the vaca-
7 tion schedule.

8 Q Bill if Mr. Colavito?

9 A Yes, excuse me, Mr. Colavito.

10 Q What did Mr. Colavito say?

11 A He said, "You already offered to give us
12 three weeks after eight."

13 Q What did you say?

14 A I said I was unsure about that and I would
15 have to ask Bruce about it.

16 Q Had you ever offered three weeks after
17 eight?

18 A No, we had offered three weeks after ten.
19 He said that at that last meeting that we had agreed to
20 three weeks after eight.

21 Q Was there any discussion at that meeting
22 about the information which Mr. Colavito had requested?

23 A No.

24 Q Did Mr. Colavito ever request job tasks
25 again at that meeting?

1 A No.

2 Q Did Mr. Colavito ask about the Blue Cross-
3 Blue Shield Plan at that meeting?

4 A No.

5 Q What about the pension clause; did he re-
6 quest it at that meeting?

7 A No.

8 Q Did the company make a wage offer at that
9 meeting?

10 A Yes, we did.

11 Q What was that?

12 A Ten cents.

13 Q Do you know if the welfare and pension plan
14 was broken down again for Mr. Colavito?

15 A No.

16 Q It was not?

17 A When you say "broken down" --

18 Q Into cents per hour; did you review that
19 again with Mr. Colavito?

20 A Yes.

21 Q You did?

22 A Yes.

23 Q What was discussed about that?

24 A We told him roughly what the cents per hour
25 for both the pension and the welfare would be.

1 Q How did that meeting come to end?
2 Let me ask you first, how long did that
3 meeting last?

4 A Possibly two and a half, three hours.

5 Q How did the meeting come to its end?

6 A Mutual agreement.

7 Q Did you complain that you had a headache
8 or stomachache and had to leave early?

9 A No.

10 Q At that time?

11 A No.

12 Q Did you promise to get Mr. Colavito inform-
13 ation at that meeting?

14 A No.

15 Q Did Mr. Colavito ever tell you at that
16 meeting that he wanted to meet earlier and that he did
17 not want to meet in the afternoon?

18 A I don't know if it was on this occasion,
19 but on one occasion he said, "Let's try a morning meeting."

20 Q That was the only time he said it?

21 A No, I think he said it on one other occasion.

22 Q Did he object to meeting in the afternoon
23 with you?

24 A Except for those two times, I can't recall
25 him voicing an objection.

1 Q Were morning meetings set up on those two
2 times?

3 A Yes, they were.

4 Q Do you recall when the next meeting was?

5 A I will have to refer to my calendar.

6 Q Please do so.

7 A November 22nd.

8 Q When did the November 22nd meeting start?

9 A Nine o'clock.

10 Q 9:00 A. M.?

11 A 9:00 A. M.

12 Q Do you recall if there was a meeting on
13 November 12th?

14 A I'm not -- I will have to refresh my re-
15 collection.

16 Yes.

17 Q There was?

18 A Yes.

19 Q Do you have any recollection of what hap-
20 pened on the 12th at the meeting?

21 A I would like to turn to my notes.

22 It was either at this meeting or the meeting
23 on the 22nd that we increased our offer to twenty-five
24 cents an hour.

25 Q When you say your offer, your wage offer

1 that is?

2 A The wage offer.

3 Q Anything else?

4 A Yes. We offered the Blue Cross and Blue
5 Shield plan after one year to the employees in the unit.

6 We also offered three weeks after ten
7 years, clarified that, and the third week would be sched-
8 uled in accordance with production needs of the employer.

9 Q Did Mr. Colavito at that meeting make any
10 request for job tasks?

11 A No, he did not.

12 Q How long did this meeting last on the 12th?

13 A I would say approximately three and a half
14 hours.

15 Q Under what circumstances did the meeting
16 end?

17 A Mutual greement.

18 Q Was another meeting date scheduled?

19 A Yes. That is the one that was set up
20 for the 22nd.

21 Q That started at 9:00 A. M.?

22 A Yes.

23 Q Do you recall if there was any discussion
24 on overtime on the 22nd?

25 A No, I'm not clear on that. I would have

1 to then check.

2 What section is that?

3 Q The union Section 7.

4 A No. We went through and the union restated
5 its demands, relating to the language we had given them.

6 They wanted double time on Sunday and time
7 and a half after 8:00.

8 They dropped the "A" part of it.

9 Q At any ~~time~~ during negotiations did the
10 company ever agree to pay double time for Sunday?

11 A No.

12 Q Did the company ever agree to pay time and
13 a half for hours after 8:00?

14 A No.

5 15 Q What was the company's position on over-
16 time?

17 A The company's position was stated in the
18 proposals that were handed to the union on the 20th of
19 September.

20 The company was willing to pay premium
21 pay for Saturdays, Sundays, holidays, at time and a half.

22 Q Now, do you recall how long this meeting
23 lasted?

24 A No.

25 Q Do you recall under what circumstances

1 the meeting ended?

2 A At this meeting--we are referring to the--

3 Q 22nd, yes.

4 A I told Mr. Colavito that we covered a lot
5 of ground. He agreed with me as far as submitting to
6 him a second set of proposals with changes that we agreed
7 or thought we had agreed to in the previous two months.

8 Q What happened then?

9 A And then the meeting broke up.

10 Q Was a meeting set at that time?

11 A No.

12 Q Would you tell me what happened after the
13 meeting broke up?

14 A Let me take a look at my calendar again.

15 On the 3rd--

16 MR. KAUFMAN: Could you repeat the last
17 answer to me?

18 (The reporter read the last answer.)

19 Q Was anything said about the new meeting
20 date at this meeting?

21 A No.

22 Q Was anything said about you getting these
23 propesals to Mr. Colavito?

24 A Yes.

25 Q What was that?

A That as soon as I could redraft the lan-

1 guage, I would send it to him, and I felt I should be
2 able to get it to him by the third week in December.

3 Q Did you ever tell him that you would have
4 it to him within ten days?

5 A I did not.

6 Q Can you tell us, did you get the language
7 to Mr. Colavito by the third week in December?

8 A No, I did not.

9 Q Did you have any communication with Mr.
10 Colavito during the month of December?

11 A I called him and told him I'd be a little
12 late with the language.

13 Q Did he object to this?

14 A No, he did not.

15 Q When was the next time you had any commun-
16 ication by either telephone or letter with Mr. Colavito?

17 A When I sent him the proposals.

18 Q When was that?

19 A The first week in January.

20 Q I show you General Counsel's Exhibits 14
21 and 15 in evidence and ask you if this is a letter and
22 proposals which you sent to Mr. Colavito?

23 Let me give you -- could we go off the
24 record a second?

25 JUDGE WEIL: Off the record.

1 (Discussion off the record.)

2 JUDGE WEIL: On the record.

3 We will break for lunch for an hour.

4 (At 12:45 o'clock P. M., a luncheon recess was
5 taken until 1:45 o'clock P. M.)
6
7

8 A F T E R N O O N S E S S I O N

9 1:45 P. M.
10

11 MR. KAUFMAN: Your Honor, during the
12 luncheon recess Mr. Eisenberg and myself photostated
13 all of the Respondent's Exhibit which were placed into
14 evidence this morning and I was wondering if at this
15 time I could introduce substituted copies for originals
16 which were placed in evidence.

17 JUDGE WEIL: Yes, you may substitute
18 copies.

19 I would assume the Xerox picked up the
20 reporter's stamp on them?

21 MR. KAUFMAN: Yes.

22 Here is Respondent's Exhibit 10, Respon-
23 dent's Exhibit 9.

24 JUDGE WEIL: 9 was not offered.

25 MR. KAUFMAN: I'm sorry. Respondent's

1 Exhibit 8, Respondent's Exhibit 6, Respondent's Exhibit
2 5, Respondent's Exhibit 3, Respondent's Exhibit 4, Re-
3 spondent's Exhibit 2.

4 Your Honor, I believe that the diary will
5 have to be remarked as we had marked the front part of
6 the book and since we only put in four pages, that would
7 have to be remarked.

8 JUDGE WEIL: Well, off the record.

9 (Discussion off the record.)

10 JUDGE WEIL: On the record.

11 D A V I D M. T O L M A C H, having been previous-
12 ly duly sworn, resumed and witness stand and continued to
13 testify as follows:

14 DIRECT EXAMINATION (continued)

15 BY MR. KAUFMAN:

16 Q I believe when we broke for lunch we had
17 just reached January 7, 1975.

18 Mr. Tolmach, I believe I had shown you
19 General Counsel's Exhibit 10 and General Counsel's Exhibit
20 15 and asked you whether or not this is the letter and
21 proposals which you sent to Mr. Colavito.

22 A Yes.

23 Q After you sent those to Mr. Colavito, when
24 was the first time after that that you heard from Mr.
25 Colavito?

1 A The 29th.

2 Q What happened on that date?

3 A We called and set up a meeting for the
4 14th.

5 Q Was the meeting set up in the telephone
6 conversation?

7 A No, I sent a letter on Monday, I think it
8 was the third.

9 Q Did you discuss the 14th during your tele-
10 phone conversation?

11 A I mentioned it briefly. Then we talked
12 again on the 3rd, and we set up a mutually agreeable date,
13 which was the 14th.

14 Q So when you spoke to Mr. Colavito again on
15 the 3rd you had agreed to the 14th?

16 A That is correct.

17 To the best of my recollection, though,
18 there was some question at the time whether either of us
19 could make it.

20 He informed me that he was going to be out
21 of the country during that week, the week of the 14th.
22 That is as much as I can recall now, but a meeting was
23 set up for the 14th.

24 Q Do you recall that you discussed any of the
25 company's economic proposals during your telephone call?

1 A Yes. He had asked me about the company's
2 offer and I reiterated what we had given to him up to
3 that point.

4 Q I show you General Counsel's 7 in evidence.
5 I ask you if you could identify that letter.

6 A Yes. This was the letter I mailed to Mr.
7 Colavito on the 3rd.

8 Q Now, after that letter went out did a meet-
9 ing take place on February 14th?

10 A It did not.

11 Q Will you tell us what happened?

12 A I called Mr. Colavito and I told him that
13 I would be quite late for the meeting on the 14th, would
14 he prefer scheduling a meeting for next week?

15 I think I threw out the 18th and 19th as
16 alternative dates.

17 Q Were those the following days after the
18 14th, the following work days?

19 A Yes.

20 Q What did Mr. Colavito say?

21 A He was unable to meet and we set up altern-
22 ative dates. It was a Friday and a Monday. I thin' it
23 was the last day of the month or around there, and the 3rd,
24 and we mutually agreed to select the 3rd of March.

25 Q Did there come a time when a meeting was
held on March 3rd?

1 Q At what time was that meeting held?

2 A I think it was ten. Let me refer to my--
3 is it all right, YourHonor?

4 JUDGE WEIL: Yes.

5 A (continuing) It was ten o'clock.

6 Q Do you know how long the meeting lasted?

7 A It was a rather long meeting. We were go-
8 ing over the redraft of the language, my initial proposals,
9 the proposals that I mailed to Mr. Colavito in January.

10 Q Did Mr. Colavito request any information
11 at this meeting?

12 A Yes, he did.

13 Q Would you tell us what he requested?

14 A He requested the names and addresses of
15 the new employees, bonus information, and he renewed his
16 request for job functions.

17 Q Anything else?

18 A Not that I can recall.

19 Q Had Mr. Colavito ever requested bonus inform-
20 ation before, prior to this meeting?

21 A He did not.

22 Q Was this the first time that Mr. Colavito
23 had requested the names and addresses of the new employees
24 hired since the August meeting when you turned over the
25 information?

1 A Yes, it was.

2 Q What about the job functions, what was the
3 time prior to this, if you can recall, when Mr. Colavito
4 had requested job functions?

5 A It was the September 9th meeting, at which
6 time Bruce Gitlin went through each job that each employee
7 did with Mr. Colavito and he wrote it down.

8 Q I show you Respondent's Exhibit 9 for
9 identification.

10 Let me ask you this. Did you respond to
11 Mr. Colavito about job tasks?

12 A Yes, I gave him something that Bruce had
13 used when I think he read off the job description initially.

14 Q When he read off the job descriptions to
15 Mr. Colavito?

16 A Initially at the September 9th meeting.

17 Q Did you give this to Mr. Colavito?

18 A Yes, I did.

19 Q I show you Respondent's Exhibit 9 for iden-
20 tification and ask if you can identify that.

21 A Yes.

22 Q Will you tell us what that is?

23 A It is a listing of the employees and a
24 description of what the employees did.

25 MR. KAUFMAN: Offered.

1 JUDGE WEIL: Any objection.

2 MR. EISENBERG: No objection.

3 JUDGE WEIL: Received.

4 (Respondent's Exhibit No. 9 for identifi-
5 cation received in evidence, as of this date.)

6 BY MR. KAUFMAN:

7 Q Can you tell me whether or not the union
8 security clause was discussed at this meeting?

9 A Not the union security clause. I handed
10 to Mr. Colavito a copy of a proposed union security
11 clause.

12 Q I show you General Counsel's Exhibit 16
13 in evidence and ask you if you can identify that.

14 A Yes, this is a copy of the union security
15 clause which I gave Mr. Colavito on March 3rd.

16 Q Mr. Tolmach, as an attorney who has negoti-
17 ated labor contracts, what form of union security clause
18 is this?

19 A Modified maintenance of membership.

20 Q Do you know if the ehckoff clause was agreed
21 to at that time?

22 A I think we just about reached agreement on
23 checkoff. There might have been some questions concern-
24 ing the number of days that an individual had to withdraw
25 his checkoff at the end of the year. I'm not sure on that

1 point, but it was basically--it was basically the union's
2 language and I think it was the March 3rd meeting.

3 Q Did the company agree at the March 3rd
4 meeting to a modification under hours of work of the
5 first two paragraphs of the union's proposal?

6 Let me show you the union's proposal,
7 Page 6.

8 A No, no, not to the union proposal.

9 Q Did the company agree to pay double time
10 for Sunday?

11 A No, it did not.

12 Q Was there discussion about clauses that the
13 company had shifted its position on or retracted its
14 position on?

15 A Not at this meeting.

16 Q Or reneged?

17 A No.

18 Q Did the union request information on sick
19 leave at this meeting?

20 A May I refer to my notes?

21 MR. KAUFMAN: Your Honor?

22 JUDGE WEIL: Yes.

23 A No.

24 Q What about pension costs?

25 A No.

1 Q And welfare costs?

2 A No.

3 Q Did the union ask for a welfare program
4 at that time?

5 A No, it did not.

6 Q The company's welfare program?

7 A No.

8 Q Approximately how long did the meeting
9 last?

10 A This is the March 3rd?

11 Q The March 3rd meeting.

12 A I'd say about four to five hours.

13 Q At the time that it ended was another date
14 set up?

15 A Yes.

16 Q Do you recall what date that was?

17 A It was later on in March. I would like
18 to refer to my calendar.

19 14th.

20 Q Was there a meeting on March 14th?

21 A Yes, there was.

22 Q What time did that meeting start?

23 A Approximately two o'clock.

24 Q Did the company turn over any more inform-
25 ation to the union at that meeting?

1 A Yes, it did.

2 Q I show you G. C. 17 and ask you if you can
3 identify that.

4 A Yes.

5 Q Can you tell us what that is?

6 A That is the information that was handed to
7 Mr. Colavito.

8 Q Was all of that information given to him
9 on 3/14?

10 A No, the ink was given to him on 3/14; the
11 pencil, I think, was given at the next meeting; I think
12 that was March 26th.

13 Q The ink indicates what?

14 A It is the name of the new employees, their
15 rates of pay, and then the names of all the employees
16 and the bonuses for '74.

17 Q Is that what Mr. Colavito had requested?

18 A Yes. I think he might have requested, al-
19 though we weren't clear on it, the information that we
20 gave at the subsequent meeting.

21 I called their office and gave Mr. Colavito
22 the bonuses for the two preceding years, as well as the
23 addresses of the employees.

24 Q Did Mr. Colavito raise or make any requests
25 for pension costs at that meeting?

A

1 A No.

2 Q Did Mr. Colavito make any requests for wel-
3 fare costs at that meeting?

4 A No.

5 Q Did Mr. Colavito ask for the welfare book-
6 let at that meeting?

7 A No.

8 Q Was there any discussion about vacations
9 at that meeting?

10 A May I refer to my notes?

11 MR. KAUFMAN: Your Honor?

12 JUDGE WEIL: Yes.

13 THE WITNESS: Is this the--

14 Q March 3rd.

15 A Yes, it was. Mr. Colavito wanted three
16 weeks after eight years.

17 JUDGE WEIL: March 3rd?

18 MR. KAUFMAN: March 3rd.

19 THE WITNESS: March 3rd.

20 Q What was the company's position?

21 A We told him that we were standing pat with
22 the three weeks after ten.

23 Q Did Mr. Colavito at that meeting say the
24 company had gone back on its initial proposal?

25 A No, he had brought this up at an earlier

1 meeting when we told him there was a misunderstanding,
2 and I told him that I would have to get back to Bruce,
3 and when we talked over the minutes of the meeting at
4 this earlier time, we arrived at the conclusion it was
5 three weeks after ten.

6 Q To the best of your knowledge, did the com-
7 pany ever offer three weeks after eight years?

8 A No, it did not.

9 Q Approximately how long did this meeting
10 last?

11 A Which one is this now?

12 Q March 3rd.

13 JUDGE WEIL: March 3rd? You halfway went
14 through March 14th.

15 Q I'm sorry. On March 14th was there any
16 discussion of vacation?

17 A Yes.

18 Q Can you tell us what that was?

19 A Mr. Colavito wanted a pro rata vacation.
20 There was also discussion on the amount of vacation we
21 were giving.

22 Q When you say discussion on the amount of
23 vacation, what do you mean?

24 A He wanted more vacation.

25 Q Was there any other discussion on vacation?

1 A Yes, going into a little more detail on the
2 pro rata. He wanted pro rata vacation in cases of dis-
3 charge.

4 Q Did you agree to that?

5 A No.

6 Q How long did that meeting last on March 14th?

7 A It was sometime in March where I--I don't
8 know whether it was this meeting or the next one where I
9 was ill and I didn't want to break off the meeting so I
10 met and the meeting--I think the meeting lasted approximate-
11 ly an hour and a quarter, an hour and a half.

12 Q And was a new meeting date set?

13 A I'm not sure on that point.

14 Q Do your records reflect when the next meet-
15 ing date was?

16 A 3/26.

17 Q March 26th?

18 A Yes.

19 Q Did Mr. Colavito--

20 A As a matter of fact, in looking at the
21 March 26th, I'm almost certain that was the meeting that
22 I met with Mr. Colavito.

23 Q And had a headache?

24 A Yes.

25 Q So on March 14th you negotiated until about

1 what time?

2 A Probably about 5:00, 5:30.

3 Q And on March 26th is when you had the head-
4 ache?

5 A Yes.

6 Q Directing your attention to the March 26th
7 meeting, did Mr. Colavito ever say that he would accept
8 whatever date you had available to negotiate?

9 A Yes.

10 Q And was the 26th your earlier date?

11 A That was the date we agreed to.

12 Q On 3/26 would you tell us when that meeting
13 took place?

14 Was it an afternoon or morning meeting?

15 A It was in the afternoon.

16 Q Did Mr. Colavito make any request for in-
17 formation at that meeting?

18 A Yes, he again asked for sick leave and I
19 told him that we had given him an answer before, that
20 there was no policy, there were no certain number of days
21 for each individual.

22 Q Does the company have a policy on sick leave?

23 A No, it does not.

24 Q On 3/26 did you supply Mr. Colavito with
25 the addresses of the new employees?

1 A Yes, I did.

2 Q Did Mr. Colavito make a request for any wel-
3 fare information on this date?

4 A No.

5 Q Did Mr. Colavito make a request for any
6 pension information on this date?

7 A No.

8 Q Did Mr. Colavito make any request for job
9 tasks on this date?

10 A He again asked for the job operations.

11 Q What did you say?

12 A I told him he had it, we had given it to him.
13 We didn't have anything other than what we had given him.

14 Q Do you know if another meeting was set up
15 at this time?

16 A Let me look at the book.

17 I'm not certain.

18 Q Did a meeting take place after this meeting?

19 A Yes.

20 Q When was that?

21 A That was April 18th.

22 Q Where did that meeting start, in the morning
23 or afternoon?

24 A That started at two.

25 Q Was there any discussion of a bargaining unit

1 at that meeting?

2 MR. EISENBERG: Can the record reflect
3 that he is looking at his notes?

4 JUDGE WEIL: Yes.

5 A Yes.

6 Q What was that discussion, would you tell us?

7 A Mr. Colavito wanted the address of the com-
8 pany crossed off.

9 Q What was the company's position?

10 A The company's position is that the contract
11 should apply to the employees in this particular plant.

12 The other thing regarding bargaining unit
13 was Mr. Colavito wanted the language and work done by
14 these employees also included, and I said that that smacked
15 of subcontracting, and I went on to say that we would give
16 him language to the effect that the employer shall con-
17 tinue to subcontract as it has in the past, and that was
18 not acceptable to him.

19 Q Was that to be as part of the bargaining
20 unit language?

21 A No, that would be a separate clause.

22 Q Did Mr. Colavito make any requests for any
23 additional information at this time?

24 A No, he did not.

25 Q Did he request welfare costs at this meeting?

1 A No.

2 Q Did he request job classifications at this
3 meeting?

4 A No, he did not.

5 Q Directing your attention to bereavement
6 leave, was there any discussion on bereavement leave?

7 A No.

8 Q Approximately what time did this meeting
9 end?

10 A Probably 5:00, 5:30.

11 Q Was another meeting scheduled at this time?

12 A Yes.

13 Q When was that for?

14 A May 2nd.

15 Q Was that an agreeable time for everyone?

16 A Yes.

17 MR. EISENBERG: Objection; leading.

18 JUDGE WEIL: Overruled.

19 Q Did Mr. Colavito make any request that you
20 meet prior to May 2nd?

21 A No, he did not.

22 Q Was there a meeting on May 2nd?

23 A Yes, there was.

24 Q What time of day did the meeting start?

25 A Two.

1 MR. EISENBERG: Let the record show the
2 witness referred to the calendar.

3 Q Two o'clock?

4 A Two o'clock.

5 Q Approximately how long did the meeting last?

6 A Approximately three, three to four hours.

7 Q Did the parties discuss the contract pro-
8 posals during this meeting?

9 A May I refer to my notes?

10 JUDGE WEIL: Yes.

11 A (continuing) Yes.

12 Q Can you tell us which proposals were dis-
13 cussed, not the details of it, just which proposals were
14 discussed?

15 A Seniority and vacation.

16 Q Were those the only two that were discussed
17 at this meeting?

18 A That is correct.

19 Q At the time that the meeting ended was a
20 new date set for another meeting?

21 A May 9th was set.

22 Q May 9th was set at the end of the meeting?

23 A Yes.

24 MR. EISENBERG: Your Honor, may I have one
25 moment?

1 JUDGE WEIL: Off the record.

2 (Discussion off the record.)

3 JUDGE WEIL: On the record.

4 BY MR. KAUFMAN:

5 Q Was there a meeting on May 9th?

6 A No.

7 Q Can you tell me what happened on May 9th?

8 A The union called the meeting off.

9 Q Was any reason given for it?

10 A Yes. Mr. Colavito had oral surgery.

11 Q At the time when the meeting was called
12 off, did you have a telephone conversation with Mr.
13 Colavito?

14 A Yes. He called shortly before and left
15 word that he would be unable to make that meeting.

16 Q Was another meeting date agreed to at that
17 time?

18 A Yes, the 20th..

19 Q The 20th?

20 A Not at that time.

21 Q When was that agreed to?

22 A Subsequent to the 9th.

23 Q How was that agreed to?

24 A As the next convenient date for both of us.

25 Q Was that in a telephone conversation with
Mr. Colavito?

- 1 A Yes.
- 2 Q Was there a meeting on May 20th?
- 3 A That was called off.
- 4 Q Who called that meeting off?
- 5 A Mr. Colavito called it off.
- 6 Q Did he give a reason for calling it off?
- 7 A I forget the reason. Not sure if he gave
- 8 one.
- 9 Q Was any other meeting set up at that point?
- 10 A No, not at that time.
- 11 Q How much after the 20th did you have another
- 12 conversation with Mr. Colavito or with someone from the
- 13 union with respect to another meeting?
- 14 A I think it was about ten days.
- 15 Q Do you know when another meeting was set up
- 16 for?
- 17 A It was set up for June 19th.
- 18 Q Do you recall if there was a meeting on
- 19 May 29th?
- 20 A Yes, I think that was--it was May 29th, the
- 21 next meeting.
- 22 Q Do you recall what happened at the May 29th
- 23 meeting?
- 24 A May I refer to my notes?
- 25 Q Yes.

1 A We went over the bargaining unit, wages.
2 Mr. Colavito changed his position regarding cost of liv-
3 ing.

4 Q What do you mean "changed his position"?

5 A Initially, he had been asking for the
6 standard contract language, wage rates set forth in the
7 contract he had given us.

8 Q And--

9 A And now he was asking twelve percent plus
10 cost of living.

11 Q Was that higher than the original offer was?
12 Or lower?

13 A It was probably slightly lower.

14 Q Is there a record of anything else being
15 discussed?

16 A We discussed bereavement, and we stated
17 that we had gone as far as we could.

18 Q How far was that?

19 A We had given them three days from day of
20 death to day of burial, inclusive, and at Mr. Colavito's
21 insistence, we had just left it from day of death.

22 Q What else was discussed at that meeting that
23 you recall, just the areas?

24 A Reporting pay.

25 Q Do you know if the company agreed to make

1 a proposal of sick leave at that meeting?

2 A It did not.

3 Q Did Mr. Colavito request any information
4 about compensation at that meeting?

5 A He did not.

6 Q Meaning Workmen's Compensation, I would
7 think.

8 A No.

9 Q Had that ever been discussed?

10 A Yes, we had discussed it.

11 Q When was that?

12 A Prior to this meeting, because I gave it
13 to him in our amended contract language.

14 He wanted to know if the company had a
15 policy regarding paying for doctors' visits resulting
16 from workmen's comp accidents, whether we had a policy
17 regarding a workmen's compensation hearing.

18 We told him that we would make some con-
19 cession in this area, but the company did not have any
20 policy at all.

21 Q Was that contained in contract language?

22 A Yes.

23 Q Let me ask you this. Did there come a
24 time when you sent Mr. Colavito, either prior to or
25 subsequent to May 29th, new contract language?

1 A Revised--there were some revisions, yes.

2 Q Do you recall when you sent that?

3 A It was sometime in May.

4 Q I show you General Counsel's Exhibit 18 and
5 ask you if this is the language--

6 MR. KAUFMAN: May we go off the record again,
7 Your Honor?

8 JUDGE WEIL: Yes.

9 (Discussion off the record.)

10 JUDGE WEIL: On the record.

11 Q Is the language which is in front of you
12 in General Counsel's 18, the language which you sent in
13 May?

14 A Yes, in the middle of May.

15 Q Was that sent to Mr. Colavito?

16 A Yes.

17 Q At this meeting did Mr. Colavito make any
18 requests for classifications or job tasks?

19 A He did not.

20 Q Did he ask for any welfare information,
21 either costs or booklets?

22 A No, he did not.

23 Q Do you know if another meeting was scheduled
24 at the conclusion of this meeting?

25 A I'm not sure if one was scheduled at this

1 meeting.

2 Eventually, we scheduled one for the middle
3 of June. I think Mr. Colavito, at the end of this meet-
4 ing, said that he was going to be tied up.

5 Q Did he tell you what he would be tied up
6 with?

7 A He said he was in negotiations for the
8 Association.

9 Q At some point was the meeting set up?

A Yes, it was.

11 Q And what date was it set up for; if you
12 recall?

13 A May I look at my calendar?

14 JUDGE WEIL: Yes.

15 A (continuing) It was set up for the 19th
16 of June.

17 Q Did the meeting take place on June 19th?

18 A It did not.

19 Q Can you tell us what happened on June 19th?

20 A Yes. I was in my office and Mr. Schifano
21 came up. We went into one of my partner's offices and
22 I talked to Mr. Schifano for approximately an hour.

23 Q Were you negotiating with him?

24 A Mr. Schifano did not have the authority to
25 negotiate and he was awaiting a call from Mr. Colavito.

6
1 Q What happened at that point?

2 A Mr. Colavito was tied up with the Associations
3 and he was never able to make it that day, and after ap-
4 proximately an hour, Mr. Schifano left.

5 Q Did you ever call up in the morning to
6 cancel that meeting?

7 A No, I did not.

8 Q Were you prepared to negotiate on June 19th?

9 A Yes, I was in the office, prepared to
10 negotiate.

11 Q Was another meeting date agreed to?

12 A No, not at that meeting.

13 Q Do you recall when another meeting date was
14 agreed to?

15 A Sometime after the June 19th meeting.

16 We had a conversation and -- telephone con-
17 versation -- and the 11th of July we set up.

18 Q July 11th?

19 A Yes.

20 Q Did a meeting take place on July 11th?

21 A Yes, it did.

22 Q Was that at your office again?

23 A Yes, it was.

24 Q Will you tell us at what time it started?

25 A May I look at this?

1 JUDGE WEIL: Yes.

2 A (continuing) 2:30.

3 Q What provisions of the contract were dis-
4 cussed during that meeting?

5 A May I refer to this?

6 JUDGE WEIL: Yes.

7 A (continuing) Plant visitation, bereavement,
8 parts of seniority, parts of hours of work. That is
9 Section 6, Section 15; that is non-discrimination.

10 Bulletin board, union security from the
11 company stating that it maintained its position with the
12 maintenance of membership language that it had given.

13 Q Do you know if any agreement--

14 A --I'm sorry.

15 Q You go ahead, finish. I'm sorry.

16 A We okayed the bulletin board language, at
17 least I have that in my notes.

18 Q Whose language?

19 A The language that was before us. I think
20 it was the language of the proposal that I submitted to
21 the union.

22 Q What else, if anything? Do you recall if
23 there was an agreement on bereavement?

24 A There was an okay on bereavement and an okay
25 on leave of absences we proposed.

1 Q Leave of absence was also discussed then
2 and agreed to?

3 A That is correct.

4 Q What about hours of work; any agreements
5 reached on that?

6 A Just from the stand--no, no, no. It was
7 discussed as far as changes in the schedule, meet and dis-
8 cuss with one week's notice, that is the changes in the
9 shift schedule, but there was no real agreement.

10 Q What about non-discrimination?

11 A Part of it was okay, not the entire section.

12 Q What about -- was there any discussion on
13 reporting pay?

14 A No.

15 Q How long did the meeting on July 11th last,
16 if you recall?

17 A The meeting on July 11th lasted until ap-
18 proximately five o'clock. That was other than the night
19 I was sick, I had an office meeting that night, so the
20 office meeting, according to my records, began at 5:30.
21 That is July.

22 Q 11th?

23 A July 11th, yes. So we broke probably about
24 5:15.

25 Q And was another date set at that time?

1 A Not that I can recall.

2 Q Do you recall if another date was set at
3 all after that July 11th meeting?

4 A We had--yes, there was a date set. There
5 was a date set for the 24th of July.

6 Q And was there a meeting on July 24th?

7 A No, I had to break it.

8 Q Can you tell us what happened on July 24th?

9 A I had business in lower New York. I thought
10 it would break around twelve.

11 When I saw that it was going to run on in
12 the afternoon, I called Mr. Colavito's office.

13 He didn't get the message and he showed up
14 at my office and called me at the client and I apologized.

15 Q You had a conversation with him?

16 A It was a brief conversation. The client
17 I was involved with, an acquisition, and we were merging
18 seniority lists and it was a big problem, and I talked
19 with Bill very briefly and apologized, and got back to
20 work with the client.

21 Q Was there any date set at that time for
22 another meeting?

23 A No, there was not.

24 Q How was it left?

25 A I was to get back to Bill.

1 Q Did you get back to Bill?

2 A I didn't get back to him but I called his
3 office, I would say, on two occasions.

4 Q Between what dates?

5 A I think it was the 1st--it was--I just want
6 to take a look at the calendar. It was the 31st because
7 I knew I tried to get him for two days, two days prior to
8 going to Hawaii.

9 I was gone the first full week in August.

10 Q So you tried to call Mr. Colavito?

11 A Yes.

12 Q Had Mr. Colavito attempted to call you dur-
13 ing that period?

14 A Yes.

15 Q Had you returned his calls?

16 A Yes.

17 Q And you had been unable to talk to each
18 other?

19 A I never touched base with him.

20 Q When was the next time that you either talked
21 to Mr. Colavito or heard from Mr. Colavito and the union?

22 A It was the week after I got back from Hawaii.

23 Q And do you recall what happened at that time?

24 A I was in Hawaii on business.

25 I drafted a letter and mailed it to Mr.

1 Colavito.

2 Q Had Mr. Colavito sent you a letter?

3 A Yes, he did. I think his letter was dated
4 the 12th.

5 JUDGE WEIL: There is no issue about that?

6 MR. KAUFMAN: No.

7 Q The letter which you sent Mr. Colavito, did
8 you suggest a date for a meeting?

9 A Yes, I suggested the 3rd.

10 Q Was there a meeting on the 3rd?

11 A No, there was not.

12 Q Can you tell us what happened?

13 A Mr. Colavito was tied up with something
14 and he suggested the 9th, and it was mutually acceptable
15 to the two of us.

16 Q Was a meeting held on the 9th?

17 A Yes, there was.

18 Q Could that have been the 11th?

19 A The 11th? It was 9/11.

20 Q 9/11?

21 A Yes.

22 Q Where was that meeting held?

23 A The meeting was held at our office.

24 Q What time of day?

25 A May I look at the calendar again?

1 JUDGE WEIL: Yes.

2 A (continuing) It was at two o'clock.

3 Q Can you tell us what items were discussed
4 at that meeting?

5 A It was basically Section 4 and--

6 Q Section 4 is what?

7 A Section 4 is seniority.

8 Q That is Section 4 of the union's proposals?

9 A Excuse me. Section 4 of the union contract,
10 the union security, and Mr. Colavito wished to trade off
11 the checkoff if we would adopt his union shop language.

12 Q Did you agree to that?

13 A No, we did not.

14 Q Was there any other discussion at this
15 meeting?

16 A No. He got up and left.

17 Q Do you recall if Mr. Colavito made any re-
18 quest for job tasks again at this meeting?

19 A No. It was a very short meeting and he left.

20 Q Did Mr. Colavito say anything about the long
21 delays in the bargaining?

22 A No, he did not.

23 Q Did Mr. Colavito ask for welfare costs at
24 this meeting?

25 A He did not.

1 Q Did he ask for pension costs at this meeting?

2 A No, he did not.

3 Q Was another meeting set up prior to Mr.
4 Colavito leaving?

5 A No, I don't think there was one.

6 Q How was it set up, if you remember?

7 A I think we agreed subsequent to this meeting.

8 The only reason I said this meeting wasn't
9 set up with this one is that it was an extremely short
10 meeting and he left.

11 It was probably set up about a week later
12 via telephone.

13 Q Do you recall what date it was set up for?

14 A It was originally set up for the 19th and
15 Mr. Colavito had something so I met with him the follow-
16 ing day.

17 Q The 19th?

18 A Yes, I think it was the calendar--

19 Q Is that what your calendar reflects?

20 A Let me take a look.

21 No, excuse me. It was the 29th.

22 Q And you met with him on the 30th?

23 A On the 30th, yes.

24 Q Did anything happen between the meeting

25 on 9/11 and the meeting on 9/30 involving Milgo?

1 A Yes.

2 Q What happened?

3 A A decertification petition was filed.

4 Q When you arrived at the meeting on 3/30,
5 at what time of the day did the meeting start?

6 A Again, it was in the afternoon.

7 Q And did you make any statement at that point?

8 A Yes, I did.

9 Q Can you tell us what you said and what Mr.
10 Colavito said?

11 A What I told Mr. Colavito, it was my under-
12 standing that a decertification petition was filed.

13 I also told him that as far as I understood
14 the law, it might be in violation to bargain with the
15 outstanding decertification.

16 I would appreciate it if he would get back
17 to his attorney and then get back to me. That is what
18 I told him.

19 Q Did you tell him that you were willing to
20 discuss the matter further with their attorney?

21 MR. EISENBERG: Objection.

22 JUDGE WEIL: Overruled.

23 A I didn't put it in those words, but I said
24 basically what you just said before.

25 Q Did Mr. Colavito ever get back to you?

1 A No, he did not.

2 Q Mr. Tolmach, to the best of your recollec-
3 tion, and if you have to refer to your bargaining notes,
4 please do, can you tell us when the first time, accord-
5 ing to your recollection or your notes, was that Mr.
6 Colavito requested the company sick leave policy?

7 A It was in March.

8 Q In March?

9 A Yes.

10 MR. KAUFMAN: I have nothing further.

11 MR. EISENBERG: I make that request, if I
12 could have turned over to me the calendars and all of Mr.
13 Tolmach's--I would like some time--I may need fifteen
14 minutes or a half hour, but I will try to keep it as
15 short as possible.

16 JUDGE WEIL: All right, let us know when
17 you are ready.

18 MR. EISENBERG: I will.

19 MR. KAUFMAN: Can the record indicate I
20 am turning over Mr. Tolmach's calendar for 1974, for 1975
21 and the notes of the meetings kept by Mr. Tolmach.

22 JUDGE WEIL: The record will so reveal.
23 Off the record.

24 (Discussion off the record.)

25 JUDGE WEIL: On the record.

CROSS-EXAMINATION

BY MR. EISENBERG:

Q Mr. Tolmach, do you have any position other than attorney with the firm of Jackson, Lewis, et al?

A I'm a member of the firm.

Q You are a partner, are you not?

A Yes.

Q Have you always been counsel for Milgo?

A When you say that, I -- do you mean me or the firm?

Q You personally. Have you always done the work, the legal work for Milgo?

A No.

Q Other than--

A No.

Q Have you done most of the legal work for Milgo?

A No.

Q Have they ever been assigned personally to you as, you know, your particular client?

MR. KAUFMAN: Objection, Your Honor.

A When you say "legal work," I --

MR. KAUFMAN: Objection.

JUDGE WEIL: There is an objection which I am going to sustain.

1 Q When did you first get involved with legal
2 work for Milgo?

3 MR. KAUFMAN: Objection.

4 JUDGE WEIL: Tell me how it is material.

5 MR. EISENBERG: I am merely trying to find
6 a good way to put it, attach this witness to Milgo, see
7 if he is attached to Milgo in any way since or around 1971,
8 '72, '3 or '4.

9 JUDGE WEIL: He certainly is attached to
10 them now.

11 MR. EISENBERG: That is correct.

12 I take it you are sustaining the objection?

13 JUDGE WEIL: He sort of waived his profes-
14 sional standing by taking the witness stand so you don't
15 need to worry about that.

16 MR. EISENBERG: All right.

17 Could I have these marked as G. C. 19 for
18 identification, 20 and 21?

19 (Documents marked respectively General Coun-
20 sel Exhibits No. 19, 20 and 21 for identification, of
21 this date.)

22 Q Mr. Tolmach, I show you General Counsel's
23 19 for identification.

24 Can you identify it?

25 A Yes.

1 Q Can you tell us what it is, please?

2 A It is penciled notations that I made since
3 August 19th regarding negotiations with Mr. Colavito.

4 Q When did you make those notes?

5 A I would say probably ninety-nine percent of
6 them were made right at the same time as I was listening
7 to the speaker.

8 Q They don't reflect everything that went on
9 at the meetings, I take it?

10 A No, they do not.

11 Q I show you General Counsel's Exhibit 20 for
12 identification.

13 Can you identify that?

14 A That is my 1974 calendar.

15 Q And General Counsel's 21 for identification,
16 can you identify that?

17 A 21 did you say?

18 Q Yes.

19 A That is my calendar for '75.

20 Q Did you prepare both of these calendars?

21 A Yes, I did.

22 Q The writing in them is your writing?

23 A Yes.

24 Q And you sent the letter to Milgo in July
25 of 1974, suggesting that you be contacted to set up a

1 date for negotiations; what happened?

2 A Would you repeat the question?

3 MR. EISENBERG: Read the question.

4 (The reporter read the question.)

5 Q (continuing) I mean after you sent the let-
6 ter to the union, do you recall?

7 A Meeting was set up.

8 Q You don't know how it occurred?

9 A Telephone.

10 Q Can you be more specific?

11 A Received a call from Mr. Colavit or Mr.
12 Schifano and they asked, "When would you be able to meet?"

13 Q You proposed a date?

14 A Yes.

15 Q Do you remember when you got this phone call?

16 A No. It was shortly before Labor Day.

17 Q Labor Day was September, wasn't it?

18 A Yes.

19 Q I am really referring to the August 8th
20 meeting.

21 A I meant--

22 Q You sent a letter around the 25th or 24th
23 of July?

24 A No, it was the 24th I mailed it, couple of
25 days afterwards.

1 Q Did you propose the date and it was agreed
2 to; is that your testimony?

3 A Yes.

4 Q Did you also propose that a meeting be set
5 up for the afternoon?

6 A Yes.

7 Q That it would enable you to get rid of your
8 morning's work?

9 A Yes.

10 Q Isn't it a fact that you had a meeting that
11 morning?

12 A I didn't understand. What was the question?

13 Q Isn't it a fact that you had a meeting the
14 morning of August the 8th?

15 A I don't know if I had a meeting.

16 Q Well, I show you General Counsel's Exhibit
17 20.

18 A Yes.

19 Q You didn't have any meetings from August the
20 1st; is that correct?

21 A No, I was on vacation.

22 Q Is this why you proposed August 8th, be-
23 cause you were coming back from vacation?

24 A Yes.

25 Q An. August 8th meeting did occur, did it not?

1 A That is correct.

2 Q Did you take any notes for that meeting?

3 A No. Bruce Gitlin took notes of that meeting.

4 Q Did you see him taking the notes?

5 A I saw him taking some notes.

6 Q You testified that you don't believe that

7 Mr. Colavito asked for any information at that time.

8 Could he have?

9 MR. KAUFMAN: Your Honor, I am going to
10 object to the form of the question because counsel is
11 making a statement as to the witness' testimony.

12 Whether or not the witness testified to
13 that is something that will reflect in the record, but I
14 do not think that counsel during his examination should
15 paraphrase the witness' testimony.

16 JUDGE WEIL: I think it is harmless in
17 this case and I'm sure the witness is capable of straight-
18 ening him out if he misparaphrased.

19 A Let me say this. That I know he asked for
20 it on the 18th because I made my own notes--I mean on
21 the 20th, because I made my own notes on that day. It
22 was a telephone call. It is the top sheet on my notes.

23 MR. EISENBERG: Could I have this marked
24 as General Counsel 22 for identification.

25

1 (Document marked General Counsel Exhibit
2 No. 22 for identification, as of this date.)

3 MR. KAUFMAN: Could I see what that is?

4 MR. EISENBERG: Certainly.

5 Q I show you General Counsel's Exhibit 22
6 and ask you if you have ever seen this.

7 A I think this was Bruce Gitlin's notes of
8 the meeting. They are not mine.

9 Q I ask you to look at this and see if it
10 refreshes your recollection as to whether Mr. Colavito
11 discussed pension and welfare at that time.

12 A Yes.

13 Q So he did?

14 A Yes.

15 Q He requested your pension plan copy and
16 your Blue Cross plan?

17 A That's correct.

18 Q Did Mr. Colavito also request the operations
19 of individuals--

20 A Yes.

21 Q --employed by Milgo?

22 A That's right.

23 Q Your testimony, I believe, was that Mr.
24 Colavito never renewed that request for job classifications
25 after March 26th, '75.

1 A Best of my recollection, that is correct.

2 Q Why was the September 25, 1975 letter sent?

3 A I think he called Bruce on that and he
4 asked for a copy of the plan--of the jobs.

5 Q Was he in the habit of calling Mr. Gitlin
6 rather than you or did you--

7 MR. KAUFMAN: Objection to what Mr. Cola-
8 vito's habits are.

9 Q Did you lay any ground rules as to Mr.
10 Colavito's contact with your client, as to what it should
11 be?

12 A Not really. Bruce sent him directly a couple
13 of letters. Most of the information came from my office,
14 though.

15 Q Why is it that at the August 8th meeting a
16 resumption date was not made?

17 MR. KAUFMAN: Are you talking August 8,
18 1975?

19 MR. EISENBERG: That's right.

20 A We wanted an extra copy of his contract.
21 We wanted to get some information. I wanted to start
22 drafting some language. We had asked some additional
23 questions.

24 We wanted the meetings to be productive.
25 It is a small client and I wanted each meeting to have as

1 much in it as possible. That is why I submitted complete,
2 almost a complete contract at our June--September 20th
3 meeting when I finished drafting the language.

4 Q You stated that the September 19th meeting
5 was set up with a phone call.

6 A That's right, a phone call on the--that
7 was made to my office on the 19th and I returned it on
8 the 20th.

9 Q You spoke to Mr. Colavito?

10 A That is correct.

11 Q How was this meeting date proposed?

12 A We mutually agreed to that date.

13 Q Who first mentioned September 9th, do you
14 remember?

15 A No, I don't.

16 Q Did you have a meeting that morning before
17 this meeting or earlier in the afternoon?

18 A Let me see the calendar and I'm--yes, I had
19 a meeting twelve o'clock. Lasted about, I think, about
20 an hour.

21 MR. KAUFMAN: Could I see what you are
22 referring to?

23 MR. EISENBERG: Sure.

24 Q Mr. Tolmach, you didn't take any notes for
25 the August 8th meeting?

1 A No.

2 Q But you did take notes, I suppose with re-
3 spect to the telephone conversations that you had on
4 either August the 29th or--

5 A Yes.

6 Q I guess the 20th.

7 I see Mr. Colavito requested certain things.
8 Does this represent also what was talked about?

9 MR. KAUFMAN: When you say "this" --

10 Q (continuing) I'm referring to the writing
11 underneath and on the next page, next two pages.

12 A No, that is unrelated to that.

13 This is the only thing (indicating).

14 It was just--you see the green stripes. It was only this
15 one page.

16 Q What does this represent?

17 A Yes, this is the tail end to the 9th, just
18 clipped in incorrectly.

19 Q I show you this and ask you if when you
20 spoke to Mr. Colavito did you tell him what the company's
21 program was with respect to vacation?

22 A Yes.

23 Q And you told him that the maximum was
24 three weeks after ten years?

25 A Yes, but I also told him that there are only

1 a couple of lead men that got that. The rank and file
2 were not eligible for three after ten.

3 There were two key men in the company and
4 they had the three weeks after ten.

5 Q Anybody else other than lead men who had
6 more than ten years of service?

7 A That I don't know. I just told him the
8 ones that had the three after ten.

9 Q After the September 9th meeting, Bruce Git-
10 lin, according to your testimony, gave some job classifi-
11 cation information to Mr. Colavito.

12 A Yes.

13 Q And I believe you also testified that he
14 used the Respondent's Exhibit 9?

15 A No, no. I don't think it was at that meet-
16 ing. I think he had worked it up. He might have read
17 from that, but I'm not sure.

18 I had given Mr. Colavito the information
19 at the September 9th meeting. I think he might have used
20 that.

21 Q Basically told him the titles, like some
22 guy would be maintenance, some guy would be a lead man,
23 some guy would be a polisher; is that basically the way
24 he did it?

25 A No. If I had my minutes I could refresh

1 my recollection.

2 For example, he said, "I would say Pat, lead
3 man, welder, polisher, saw brake, sheer, forklift, main-
4 tenance man, does bench work, all hand tools, does loading
5 and unloading, reads drawings."

6 Then he went down all of them and as far
7 as concerned, you know, a brake and a sheer, the operation
8 was a rather simple one and it was accepted by Mr. Colavito.

9 Q At this meeting you discussed union security?

10 A That is correct.

11 Q I take it at this meeting you were basic-
12 ally giving your initial responses to his proposal?

13 A No, I was still in the stage of drafting
14 out, and in order to draft counterproposals, and we were
15 remarking, we hadn't even reached the stage of reaching
16 agreements and I went through his contract.

17 Q I know, but you had certain discussions.
18 Weren't you giving--

19 A That's right. That's right.

20 Q --your reaction?

21 A Yes.

22 Q What was your reaction to union security?

23 A My reaction to union security was that it
24 was possible that sometime in the future he might get some
25 type of union security.

1 Q How was the September 20th date and time
2 arrived at?

3 A That was the time that I felt would be
4 necessary to finalize the proposals and it was acceptable
5 to Mr. Colavito.

6 Q How did Mr. Colavito evidence his acceptance;
7 did you propose that date and Mr. Colavito said yes?

8 A It was by mutual agreement.

9 Q Again, how did it come about? Who initiated
10 that date?

11 A I initiated the date.

12 Q Didn't you initiate both of the dates?

13 A No, not really. That would be a wrong
14 assumption.

15 Q On the meeting of September 20th, did Mr.
16 Colavito make a request that he receive a copy of the
17 welfare plan?

18 A No, not that I recall. We gave him the
19 sheet. I think we gave him that information on September
20 9th.

21 Q Well, did he ever request a copy of the
22 welfare plan, the actual plan?

23 A It was very difficult to understand what
24 he was asking for a lot of the times. That is why I
25 insisted that we reduce things to writing and initial it.

1 Q Let me show you your notes which appear to
2 be for September the 20th.

3 MR. KAUFMAN: Do you mind if I look?

4 MR. EISENBERG: No.

5 Q First, can you tell me if these are the
6 notes of September 20th, these two pages?

7 Your answer is yes?

8 A Not that way.

9 Q That these are your notes for September 20th?

10 A Yes.

11 Q Didn't you write there that Mr. Colavito
12 requested a copy of the pension and welfare plan?

13 MR. KAUFMAN: Objected to as to the form
14 of the question.

15 A No, he had already been given the holidays.
16 He also asked what holidays have been given
17 and we had given him that information.

18 Sometimes he made these statements and
19 they were completely incongruous. I put it down, but
20 he already had the information, though.

21 Q He didn't have a copy of the welfare plan?

22 A Oh, he had a copy of the type of plan it
23 was, specific names, and we had already given him the
24 pension agreement the week before at the 9/9 meeting, and
25 he mentioned it again.

1 Q He knew the name of the welfare plan?

2 A He knew the name, but he had that informa-
3 tion, and he did this throughout negotiations. He either
4 had a very short memory or he had a very poor filing
5 system.

6 Q You don't know that, do you?

7 A Well, if you give him stuff on the 9th and
8 he asks for it on the 20th, you have to assume there is
9 something the matter.

10 Q Did he request job operations on this date?

11 A Yes, and I told him we gave it to him as
12 best we had.

13 We thought we had written job descriptions.
14 We did not have written job descriptions. We had fifteen
15 men running around the shop doing different jobs. We
16 told him what they had done, specifically on the 9th.

17 Q Did he ask you to work up job operations
18 with respect to what each employee does on a normal day?

19 A And we had given that to him on the 9th.

20 Q Let me try to get something clear.

21 Was it your testimony that he had request-
22 ed the pension plan, the actual document, but not the
23 welfare plan?

24 A He asked for the plans. We gave him a copy
25 of the trust agreement for the pension plan and we gave

1 him the exact title of the Blue Cross-Blue Shield plan
2 in New York City, and we also gave him the collar costs
3 of pension and welfare, and he was satisfied with that.

4 Q But he made a request thereafter?

5 MR. KAUFMAN: Objection. The witness has
6 been asked and answered that question.

7 JUDGE WEIL: Yes, he has, over and over,
8 not to mention volunteering it on two occasions.

9 MR. EISENBERG: Excuse me?

10 JUDGE WEIL: Not to mention volunteering
11 it on two occasions.

12 Q Do you recall why a new resumption of the
13 meeting wasn't set up on September 20th?

14 MR. KAUFMAN: Objection to the form of
15 the question.

16 JUDGE WEIL: Overruled.

17 A No, I don't recall.

18 Q What was your offer on Blue Cross and Blue
19 Shield at the November 12th meeting?

20 A After one year.

21 Q And you proposed the same plan?

22 A That is correct.

23 Q One year eligibility with the same plan?

24 A That is correct. The Executive Indemnity
25 Blue Cross-Blue Shield Plan.

1 Q You testified that at the November 12th
2 meeting you had discussion on overtime..

3 A Yes.

4 Q Where you stated that you were only willing
5 to pay time and a half basically.

6 A That is correct.

7 Q You always kept that position, didn't you?

8 A That is correct.

9 Q After you met on November the 22nd, you said
10 you called Mr. Colavito and told him you would be a little
11 late with the proposals.

12 When did you call him?

13 A Called him around the middle of December;
14 maybe it was around the 15th or the 30th.

15 Q Did you indicate to him at the November 22nd
16 meeting when you expected to have the proposals done?

17 A Yes, I did. I said about two to three weeks.

18 Q Did you say anything more than a little late
19 at the phone conversation?

20 A No. I actually wanted to get that to him
21 before the end of the year, around the holidays.

22 Q But you didn't really get it to him until
23 about a week afterwards? At least, you didn't mail it to
24 him until January 7th? What was the problem?

25 MR. KAUFMAN: Objection.

1 A No --

2 MR. KAUFMAN: Objection.

3 JUDGE WEIL: Overruled.

4 A That was the most difficult month I had.

5 Q A lot of work?

6 A Yes, that was a bad month. That was why
7 I was ten days late with the counterproposals or the re-
8 drafting of my first counterproposals.

7 9 Q Why did that March 3rd meeting end in the
10 middle of the afternoon?

11 A We covered a lot of points. It was a rather
12 long meeting. We agreed to end.

13 Q How did that come about?

14 A We both got tired.

15 Q Was anything said?

16 A No. We covered the points that we had to
17 cover and we both agreed to call it a day.

18 Q How did the next meeting date come about?

19 MR. KAUFMAN: After March 3rd?

20 MR. EISENBERG: After March 14th.

21 A Mutually agreed to set up the next day.

22 I was a little bit confused because either on the 14th
23 or the 26th--I think it was the 26th--that was the one
24 I was sick. That was the meeting I was sick, because the
25 3rd was the morning meeting.

1 Q No. Could have been either the 14th
2 or the 26th I was sick.

3 Q Did you propose the March 26th date?

4 A Basically it was mutual agreement. No
5 proposal.

6 Q Can you tell me how that date actually be-
7 came arrived at, do you remember?

8 A On this specific occasion I cannot. How-
9 ever, we followed the standard practice of trying to find
10 a date that was mutually convenient for both of us.

11 Q Do you recall what actually was said at
12 this one?

13 A Verbatim, no.

14 Q I think you testified--tell me if I'm in-
15 correct--that on the March 26th meeting Mr. Colavito didn't
16 request any welfare information?

17 MR. KAUFMAN: Objection to what ocunsel
18 thinks the witness testified to.

19 MR. EISENBERG: I will rephrase the ques-
20 tion.

21 Q Did Mr. Colavito request any welfare inform-
22 ation at the meeting of March 26th?

23 A One of the meetings we went over the costs
24 based on the figures we had already given.

25 I don't know if it was that meeting or the

1 previous one, but it was nothing we had to get for him.
2 We had given him the dollar amount and then I rehashed
3 the figures for him.

4 Q Let me show you this. Did you write, "Give
5 Blue Cross and Blue Shield"?

6 A Yes, that is my handwriting.

7 Q So you did renew some kind of a request
8 that day?

9 A I really don't know what that applies to.
10 I don't know whether he wanted to make sure we had given
11 Blue Cross-Blue Shield as one of the fringe benefits.

12 Q It doesn't refresh your memory?

13 A No.

14 Q When did you make a wage proposal?

15 A Made two in the fall of '74. I made a
16 fifteen cent one and I made a twenty-five cent one.

17 Q What did that wage proposal encompass;
18 was that supposed to be a straight twenty-five cents
19 put to the salaries?

20 A No. The first one was--I just said a
21 fifteen cent package which would include any cost in-
22 curred as a result of the fringe benefits as well, so
23 it was a fifteen cent total economic package.

24 When I revised my offer I went to twenty-
25 five cents, plus the pension and welfare, and I said we

1 wouldn't add a cost to that. I don't think we attribut-
2 ed a cost to the initial week's vacation, so that prob-
3 ably was at one of the November meetings.

4 Q Did you tell him what the breakdown would
5 be in the increase in salary to each fellow?

6 A Yes, twenty-five cents across the board.

7 Q Hadn't the company in the past given more
8 than that in a year to employees?

9 A Yes. This wasn't--couldn't be considered
10 a final offer.

11 Q Mr Tolmach, at the July 11th meeting you
12 mentioned that there was some kind of agreement on the
13 non-discrimination proposal. Whose proposal?

14 A It was a combination of -- mostly his lan-
15 guage. I think it was A, B and C of his non-discrimina-
16 tion clause.

17 Q You ultimately agreed to put age in as a
18 means of discrimination?

19 A Yes, that is the problem in drafting my
20 proposals. I left out age, but it was unintentional.

21 Q Those were the May 29th proposals, I take
22 it?

23 A Yes, yes.

24 Q They were your proposals--

25 MR. KAUFMAN: Excuse me.

1 Q Mr. Tolmach, how often do you travel?

2 A I usually am out of the city two to three
3 days a week. That is basically it.

4 If it is a distant trip, which is infre-
5 quent, I might be out four.

6 Q Can you recall what distant trips you took
7 between January 1st, 1975 and September 30th, 1975?

8 A If I have the calendar.
9 From when to when? From January?

10 Q January through October 1st.

11 A There were two.

12 Q When were they?

13 A August 4th through -- being this turned
14 out to be through the 7th, so it was the first four days
15 of August. First four days of a full week in August,
16 and the next one was September 22nd through September 25th.
17 Those were the--

18 Q I believe you testified that at the July 11th
19 meeting that no date was set up at that meeting for re-
20 sumption. Do you remember why?

21 A No, I can't recall.

22 Q You testified that you had made two phone
23 calls.

24 A That is correct.

25 Q You looked at your calendar when stating that.

1 Was there any indication in your calendar
2 of making two phone calls?

3 A No, but I know I did. I know I did. I
4 didn't put phone calls in any of my markings.

5 Q When you were out of town?

6 A I called just before I went to Hawaii.

7 Q Let me just show you the August, '75 date.

8 A Right.

9 Q The calendar and the period before that.

10 I don't see any notations for the 31st.

11 A No, that is why I called. That is why I
12 called and that is why we missed, and I did call Mr.
13 Colavito's office on the 20th when I had this matter in
14 the City, but I wanted to touch base with him before I
15 went to Hawaii.

16 Q Was any meeting date arranged at that time?

17 A No.

18 Q Did he ask, did Mr. Colavito ask for it?

19 A We weren't able to touch base. I called
20 him, he was in the field. He called my office.

21 Q You never spoke to him at all?

22 A No, I did not.

23 Q Did you ever offer to add anything to your
24 wage offer?

25 MR. KAUFMAN: Objection.. Which wage offer?

1 MR. EISENBERG: The twenty-five cent one.

2 A I did not.

3 Q Did you ever offer to come down from your
4 120 day probationary period?

5 A I did not.

6 Q Had you offered to come down from your
7 vacation proposal?

8 A Our first--

9 Q Increase.

10 A I increased it to the third week and, after,
11 the three weeks after ten. That is as far as we went.

12 MR. EISENBERG: I have nothing further,
13 Your Honor, but I would offer into evidence the notes
14 for September the 9th, September 20th, and for March the
15 26th of 1975, September being '74, into evidence at this
16 time.

17 JUDGE WEIL: Any objection.

18 MR. KAUFMAN: The offer is on the issue
19 of credibility?

20 MR. EISENBERG: Yes.

21 MR. KAUFMAN: I have no objection.

22 JUDGE WEIL: September 9 and 20?

23 MR. EISENBERG: September 9, September 20th
24 and March 26th, 1975.

25 JUDGE WEIL: All right. I will receive

1 them as General Counsel Exhibit 20.

2 MR. KAUFMAN: Could I see them?

3 MR. EISENBERG: I think that was 19.

4 JUDGE WEIL: 19, I'm sorry.

5 (General Counsel's Exhibit No. 19 for
6 identification received in evidence, as of this date.)

7 JUDGE WEIL: Off the record.

8 (Discussion off the record.)

9 JUDGE WEIL: On the record.

10 Is there any redirect?

11 MR. KAUFMAN: May I just have one minute?

12 JUDGE WEIL: Yes..

13 MR. KAUFMAN: I have nothing.

14 JUDGE WEIL: I don't think I have any.

15 Thank you. You may step down.

16 (Witness excused.)

17 MR. KAUFMAN: I have no further witnesses.

18 We rest.

19 JUDGE WEIL: Very well.

20 Does General Counsel have any rebuttal?

21 MR. EISENBERG: No rebuttal, Your Honor.

22 JUDGE WEIL: Does anyone want to argue
23 on the record?

24 MR. KAUFMAN: I reserve for a brief.

25 MR. EISENBERG: I would like to make a

1 short closing statement.

2 JUDGE WEIL: Proceed.

3 MR. EISENBERG: I am not summarizing every-
4 thing that has been done here, although I do wish to
5 allege on behalf of the General Counsel with respect to
6 this case that the entire course and conduct was unlawful
7 from its inception.

8 The union sent a letter initially request-
9 ing bargaining to the company and never really heard any-
10 thing from the company until three, maybe more than that,
11 three weeks later, and a meeting was subsequently arranged.

12 Virtually all of the meetings took place
13 in the afternoon. They ended around rush hour, maybe
14 before rush hour.

15 A pattern, a practice of stalling and e-
16 laying was developed by Respondent in this particular
17 case.

18 The chief negotiator for the company, a
19 very busy attorney in New York City, and even in fact ad-
20 mitted that on various occasions his busyness, if you
21 will, precluded him from timely responding to some of
22 the requests the union was making, some of the things he
23 said he would do.

24 Other obligations, other business duties,
25 other pressing work, is no excuse for refusing to timely

1 meet.

2 There were great and significant gaps in
3 some of these meetings. The last meeting was November
4 the 22nd in 1974, and nothing further was heard from the
5 company concerning another meeting until it sent a let-
6 ter on February the 3rd, 1975, at least a couple of
7 months and more than two months after that meeting broke
8 up, in spite of the persistent requests by the union to
9 have the company meet with it.

10 The negotiations basically fell apart to-
11 wards the latter stages of the bargaining. The meetings
12 after May 2nd, basically, the ones that occurred probably
13 occurred three weeks after a prior meeting and there was
14 another gap of approximately a month when no meetings
15 occurred.

16 It is clear also, Your Honor, that certain
17 information was not given to the union, although it has
18 been said that the union was requesting the name of a
19 plan, the evidence establishes clearly that they requested
20 for an actual copy of the welfare plan.

21 They requested other information as well,
22 some of which they didn't receive in a timely fashion,
23 some of which they never received.

24 The employer took extremely adamant posi-
25 tions, as a matter of fact, positions that no self-re-

1 specting union could be considered to even consider, much
2 less accept.

3 I refer to wages, which their offer was
4 not even as much as they had paid their employees in the
5 past on wages.

6 On vacations, which was basically an ad-
7 herent to the past practice, and, as a matter of fact, on
8 almost every economic issue with the exception of one,
9 they took an adamant and unyielding position.

10 We have shown that they have shifted posi-
11 tions in an effort to thwart bargaining, reneged on posi-
12 tions and interposed other positions, from which they
13 would not back down or offer anything further, and, in
14 general, bargained this union to death.

15 General Counsel asks that the allegations
16 of the complaint be so found by Your Honor.

17 JUDGE WEIL: Thank you, counselor.

18 According to my calendar, this is the last
19 day of March. I will give you until the close of business
20 on April 21st to file briefs, if you wish to file briefs.

21 If anyone requires extension of time for
22 filing of briefs, he must address his request therefor
23 to the Chief Judge, not to me, sometime prior to three
24 days prior to that date. In other words, on or about
25 the 18th.

1 I have every reason to believe I will not be
2 in Washington. If it comes addressed to me, it will not
3 considered, so please address any request for any exten-
4 sion to the Chief Judge.

5 Is there anything further to come before me
6 at this time?

7 MR. EISENBERG: No, sir.

8 MR. KAUFMAN: No, thank you.

9 JUDGE WEIL: The hearing is closed.

10 Thank you, gentlemen, for your courtesy and
11 expedition.

12 (At 5:05 P. M., the hearing was concluded.)

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